

*Disadvantaged Business Enterprise*

# DBE PROGRAM PROCEDURES

# MDOT

Michigan Department of Transportation

2023

# 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 shall also 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 provide 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, September 2023.

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Bradley C. Wieferich, P.E.  
Director

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# DBE PROGRAM AUTHORITY

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; Jan. 28, 2011; and Oct. 2, 2014. It superseded all DBE regulations, orders, circulars and administrative requirements concerning financial assistance programs issued by the US DOT before March 4, 1999. As a recipient of federal funds, MDOT is required to administer a DBE program in compliance with all laws, regulations, executive orders, and guidance.

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 that 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. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
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. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

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 190-59.
6. Federal-aid aviation, highway, and transit funds authorized by the American Recovery and Reinvestment Act of 2009, Title XII.

## **DBE Program Overview**

The US DOT Disadvantaged Business Enterprise (DBE) program provides a vehicle for increasing the participation by socially and economically disadvantaged business owners in state and local procurement. DOT DBE regulations require state and local transportation agencies that receive DOT financial assistance to establish goals for the participation of DBEs. Each DOT-assisted state and local transportation agency is required to establish annual DBE goals, review the scopes of anticipated large prime contracts throughout the year, and establish contract-specific DBE subcontracting goals. Along with the Office of Small and Disadvantaged Business Utilization (OSDBU), the Departmental Office of Civil Rights, and the Office of the General Counsel, there are three major DOT operating administrations involved in the DBE program: the Federal Highway Administration (FHWA), the Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). The state and local recipients are monitored for program compliance as part of the approved federal contracting process.

In addition to establishing goals, state and local recipients also certify the eligibility of DBE firms to participate in DOT-assisted projects. Some groups are presumed to be socially and economically disadvantaged for the purposes of participation in this program. The main objectives of the DBE program are:

- To ensure nondiscrimination in the award and administration of federally funded transportation-related projects in the department's highway, transit, and airport financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for federally funded transportation-related projects;
- To ensure that the department's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in federally funded transportation-related projects;
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

- To provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

49 CFR Part 23.13 outlines assurances of non-discrimination that recipients and contractors of federal funds must make and can be found in Attachment A.

MDOT's Program Procedures will be updated and approved by FHWA when there have been significant changes to the current approved plan.

All sub-recipients of FHWA funds must comply with MDOT's DBE Program Procedures and may not have an independent plan. Each sub-recipient has an agreement that includes the responsibility to implement the DBE program. Sub-recipients and their projects are subject to the same DBE requirements set forth in 49 CFR Part 26 and in the CUF section of this document.

All forms mentioned in this document are available at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business", "MDOT Forms." This page will include the most requested forms necessary for doing business with MDOT. All MDOT forms can be found by searching the repository of MDOT online forms (link included on the web page).

## **A. DBE Program Goals**

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 website.

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 DBE goal methodology is presented to the Michigan State Transportation Commission (STC) for approval. Once the DBE goal methodology is 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. Any allegations or determinations of overconcentration made to MDOT will be forwarded to FHWA for consultation. The overall goal is MDOT's determination of the level of DBE participation that could be expected, absent the effects of discrimination.

Based on revisions to the federal regulations that 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.

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.

## **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. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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 (MDOT Form 0168A) is used to survey the universe of vendors seeking work with MDOT. This form requests the firm's contact information, as well as its gross receipts and company status. A review of submissions supports MDOT's determination that its marketplace consists of vendors who are DBE-certified, prequalified, or approved suppliers, per 49 CFR Part 26.11(c). MDOT staff requests updated forms from applicable firms annually.

To determine MDOT's local market area, we provided analysis to see where 75 percent of the available contractors reside that perform work on projects in Michigan. We also, used to this information to determine what percentage of contract dollars went to these Michigan firms.

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**

$$\frac{\text{Number of DBEs in heavy construction}}{\text{Number of non-DBEs and DBEs in heavy construction}} = \text{DBE-relative availability in heavy construction (\%)}$$

**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 five 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 that 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 that 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 GFE requests
- Feedback and consultation regarding the proposed goal with industry, minority and women's groups as required by 49 CFR § 26.45 (g)(1) and posted on MDOT's DBE website at [www.Michigan.gov/MDOTDBE](http://www.Michigan.gov/MDOTDBE).

## **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 five years.

To promote RN participation, MDOT uses 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.

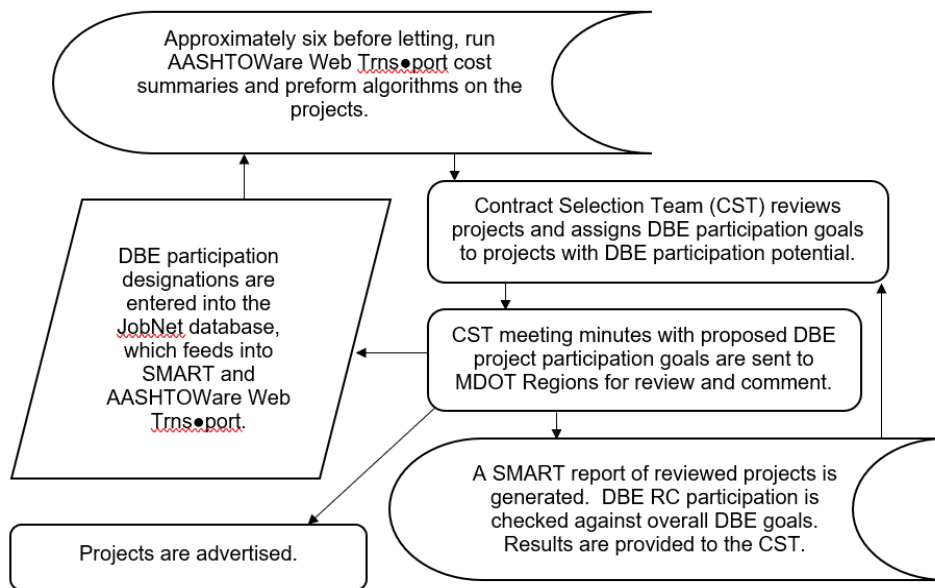
### ***The CST and DBE Participation Goals on MDOT-Let Highway Projects***

MDOT's CST reviews federally funded trunkline projects for DBE participation potential. CST members include individuals from MDOT's DBE program; Finance and Administration, Highways, Transportation Planning, and Aeronautics. The CST meets at least monthly.

1. Prior to project advertisement, approximately six weeks before each letting, the CST reviews the quarterly running tally. Then, Web Trns•port 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 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 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 [www.Michigan.gov/MDOTDBE](http://www.Michigan.gov/MDOTDBE).
  - b. DBE participation recommendations are tracked using MDOT's SMART/Jobnet system.

Following each CST meeting, DBE program staff prepare meeting minutes that are electronically distributed to MDOT region representatives for review and comment. CST will then forward the final goal to Contracts Services Division (CSD) prior to project advertisement.

A flow chart of the contract selection and review process for trunkline and local agency projects is shown.



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

### ***Composition of the Contract Selection Team (CST)***

The Contract Selection team bring a wealth of expertise in areas such as project work to be performed, firsthand location knowledge, financial factors (such as performance incentive/disincentive), effect 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 goal setting not available to the algorithm.

Note: All CST members will have alternate representatives:

- a. Office of Business Development - Three representatives (including the team chair—Lansing Business & Workforce Engagement Manager)
- b. Regions - Three representatives
- c. Finance and Administration - One representative
- d. Construction Field Services Division - One representative
- e. Transportation Planning - One representative
- f. Executive Office - One representative
- g. Aeronautics - One representative
- h. 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 Office of Business Development (OBD) administrator, to make final decisions on individual project goals.

### ***Setting Goals on Individual Projects***

The following is the algorithm for computing 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 the percentage of total project for each work classification.

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

$$\frac{\# \text{ preq/certified DBE contractors, DBE truckers \& DBE suppliers per work classification}}{\# \text{ preq contractors, truckers \& approved suppliers per work classification (including DBEs)}}$$

MDOT will use suppliers and truckers per the sources approved in the DBE goal methodology. We will update the sources indicated in Step 2 on a bi-annual basis.

Step 3: For each work classification compute:

$$\text{\$ value of work classification} \times \text{DBE multiplier (see step 2)} = \text{DBE \$ value of work classification}$$

Step 4: Compute total project DBE participation goal for contractors:

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

The CST will determine if putting a goal on each project will help MDOT meet the overall goal. If the determination is “no” the CST will document the reasons and maintain them on file. DBE contract goals will be rounded to the nearest whole number.

### ***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. A template of the DBE

Special Provision that is included in every DB project is included as Attachment C in this document.

## **DBE Goal Monitoring and Reporting**

As a recipient of US DOT federal funds, MDOT must report all contracting opportunities available to firms, DBE and non-DBE, paid for with DOT dollars. Payment and demographic information is collected in order to complete the Uniform Report of DBE commitments/Awards and Payments, which can be found in 49 CFR Part 26, Appendix B. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

These federal reports are due June 1 and Dec. 1. The June 1 report should cover the Oct. 1-March 31 period and the Dec. 1 report should cover the April 1-Sept. 30 period. If the report is due to the FAA, data should cover the entire fiscal year.

The uniform report is divided into four sections, described below:

### **Section A: Awards and Commitments Made During This Period**

The amounts in this section should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment, and any other types of services. All dollar amounts are to reflect only the federal share of such contracts and should be rounded to the nearest dollar.

Per 49 CFR Part 26.55(g), if a firm has ceased to be certified as a DBE, the work performed under a contract cannot be counted toward the overall goal.

### **Section B: Breakdown by Ethnicity and Gender of Contracts Awarded to DBEs This Period**

This section includes a further breakdown of the contracting activities to DBEs based on ethnic and gender demographics.

### **Section C: Payments on Ongoing Contracts**

This section provides information on contracts that are currently in progress. All dollar amounts are to reflect only the federal share of such contracts and should be rounded to the nearest dollar.

### **Section D: Actual Payments on Contracts Completed This Reporting Period**

This section provides information only on contracts that are closed during this period. All dollar amounts are to reflect the entire federal share of such contracts and should be rounded to the nearest dollar.

The collection of this information is reviewed by FHWA and US DOT to determine if recipients are meeting their approved overall goal.



## **B. 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 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  
Telephone: Lansing Office - 866-323-1264 or Detroit Office - 866-323-4009  
Fax: 517-335-0945  
E-mail: MDOT-DBE@Michigan.gov

Wayne County Human Relations Division  
500 Griswold, 6th Floor South  
Detroit, MI 48226  
Telephone: 313-224-5021  
Fax: 313-224-6932

Detroit Department of Transportation  
Contract Compliance  
1301 E. Warren  
Detroit, MI 48207  
Telephone: 313-833-3658  
Fax: 313-833-3542

While each individual MUCP certifying agency may process any application received, the agencies agree that all firms seeking Airport Concessionaire DBE (ACDBE) Certification within the state of Michigan shall file the initial application with Wayne County Human Relations, the certifying agency representative for the Wayne County Airport Authority. Each agency has their own procedures for managing their respective DBE program and two agencies accept applications online: MDOT and Wayne County Human Relations. For specifics on the MUCP, please review the Memorandum of Understanding (MOU) in Attachment B.

MDOT’s DBE program procedures are outlined in this plan.

## **MUCP Certifying Agency Requirements**

Each certifying agency will notify all MUCP agencies and certification applicants of their certification decisions. Certifying agencies must keep complete files on applicants and provide information as required. Certifications that 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 included on the DBE approval letter and certificate.

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 Requirement**

Each certifying agency will annually require its DBE firms to submit an annual affidavit of no change form ("Annual Affidavit"), due on their certification anniversary date. Completion of this form is required for continued certification eligibility. The certifying agencies will notify all MUCP agencies of the firm's continued eligibility.

## **DBE Directory**

The MUCP directory of all certified DBE firms in Michigan is available online at [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP).

The MUCP has determined the firms listed in the MUCP directory meet the DBE certification requirements to perform the specific work codes granted. All requests for additional work codes and/or North American Industry Classification System (NAICS) codes must be approved prior to the execution of any contract the DBE firm wishes to perform work on as a DBE. The DBE firm must meet MDOT prequalification requirements, as well as all other state and federal requirements to perform work on MDOT projects.

The DBE directory includes the following: alphabetical list of certified DBE firms, including the name, address, telephone, certifying agency, certification date, certification type (DBE, ACDBE, or both), NAICS coding, and work classifications that the firms have been DBE-certified to perform. A hardcopy directory of DBE-certified firms is available

from MDOT and is available to the public. The printed directory is published and updated upon request.

To obtain a copy of the DBE directory, contact MDOT at:

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

## **C. Certification Standards for DBE Applicants**

The integrity of the MUCP DBE program depends upon the establishment of systematic procedures to ensure only small firms independently owned and controlled by socially and economically disadvantaged persons are certified 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, as amended and 49 CFR Part 23 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, 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 \$30.40 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**

Under the DBE and Airport Concession DBE regulations at 49 CFR §§ 26.67 and 23.31, each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, must certify that he or she has a personal net worth (PNW) that does not exceed \$1.32 million. The value of the individual's primary residence and ownership interest in the firm seeking certification is excluded from the calculation valuation. For individuals that own multiple businesses or a holding/parent company with subsidiary companies, the ownership interest held in only the firm seeking DBE certification, which may be a subsidiary company, is excluded in the PNW calculation valuation. A signed, notarized PNW statement is required as part of the application to accurately determine an individual's PNW. Supporting documentation, including personal tax returns, is required as evidence and, on a case-by-case basis, the MUCP recipient may require additional financial information from the owner of an applicant firm.

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 of the United States) 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, who are enrolled members of a federally or state-recognized Indian tribe, Alaska Natives, or Native Hawaiians;

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

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), Republic of the Northern Marianas Islands, Samoa, 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: Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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).

## **Rebuttal of Presumption of Disadvantage**

An individual's presumption of economic disadvantage may be rebutted in two ways, per 49 CFR § 26.67.

1. If the statement of PNW and supporting documentation that an individual submits shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted.
2. If the individual demonstrates that they are able to accumulate substantial wealth, the individual's presumption of economic disadvantage can be rebutted.

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 PNW 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. 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.
- C. 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.
- D. 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.
- E. 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.

- F. 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. An applicable NAICS code is one that describes, as specifically as possible, the principal services which the firm would perform on DOT-assisted contracts. MDOT-certified firms are also assigned MDOT-specific work classification codes, if applicable.

Both DBE firms and MUCP certifying agencies are required by US DOT to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect the work that the certifying agency has determined the firm's owners can control. Furthermore, the firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

Vendors who wish to work for MDOT in areas that 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 online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), under "Business," click on "Contractor" or "Vendor/Consultant Services," respectively.

## Other Rules Affecting Certification

As outlined in 49 CFR Part 26.73, there are other factors to be considered by the MUCP certifying agency when evaluating certification. These considerations include:

- The eligibility of an applicant firm must be evaluated on the current circumstances. The firm cannot be denied **solely** on the basis of historical information. However, this does not eliminate the evaluation or use of past information as it relates to a firm's ownership, control or economic eligibility in conjunction with current eligibility issues.
- Newly formed firms are not excluded from eligibility exclusively based on lack of contracts or work performed as long as they meet the DBE certification criteria.
- A firm that has developed a pattern of conduct that illustrates its involvement in attempts to evade or subvert the intent or requirements of the DBE program could be cause for certification denial. Where there is proof of a firm's involvement in any attempt to evade/circumvent the program's intent/regulations, a firm may be denied certification.

- DBE applicants must cooperate fully with the MUCP certifying agency's request for information relevant to the certification process. Failure or refusal to cooperate may result in certification denial.

## D. MDOT DBE Certification Procedures

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 that apply to all firms, DBE and non-DBE alike, also have been met.

Firms wishing to be considered for DBE certification through MDOT must complete the Uniform Certification Application, PNW Statement for DBE Program Eligibility, DBE Certification Additional Information Required 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. DBE certification is free to all applicants.

Apply online by registering with MILogin and requesting access to the **MDOT MUCP** application at <https://MILoginTP.Michigan.gov/> or go to “Download Forms” at <https://MDOTJBoss.State.MI.US/MUCPWeb> for a DBE Certification Application, Personal Net Worth Statement, and DBE Certification Additional Information Required.

### Processing of Applications

The completed MUCP DBE Certification Application and all other required information should be submitted online, 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.

The completed application packages are processed based on date of receipt.

### Interstate Certification

A DBE whose primary business is not based in Michigan must be DBE-certified in their home state before they are eligible to apply for certification in Michigan. Non-Michigan certified DBEs have two options for applying for certification in Michigan:

1. Provide MDOT with a complete copy of the original application submitted to their home state, all the supporting documents, a copy of the certification approval letter that indicates the NAICS code(s), or
2. Complete a new US DOT DBE Certification application, including supporting documents and a copy of the DBE certification approval letter that indicates the NAICS code(s).

Non-Michigan applicants must also include with their application any other information they submitted to their home state, including Annual Affidavit and any notices of changes that they have submitted, any notices or correspondence from states other than their home state related to certification denials or decertification, any appeal filed with US DOT, DOT's response, and a signed, dated and notarized "Out of State Applicant Affidavit of Certification", which can be found at [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP), "Download Forms."

MDOT will obtain from the applicant's home state the on-site report supporting the DBE's certification. Within 60 days of receiving the completed application and all required documentation to determine eligibility, MDOT will send the non-Michigan applicant written notification of its decision to approve or intent to deny.

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, or both. 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.

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 of Applications**

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.

Please keep a copy of your certification application and all supporting documentation sent to MDOT.

MDOT will retain indefinitely all application packages for each certified DBE, including Annual Affidavits changes submitted by the firm; and onsite reports. Other records will be retained for three years or by MDOT's retention schedule, whichever is longer. MDOT stores these documents electronically, encrypting and uploading them to a secure server inside the State of Michigan firewall. Documents are accessible only to users connected to the State of Michigan network who have also been granted access rights by the Office of Business Development and the Department of Technology, Management and Budget.

## 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 can be made for persons who require mobility, visual, hearing, written or other assistance for participation. Large print materials, auxiliary aids or the services of interpreters, signers, or readers are available upon request. Please contact Orlando Curry at 517-241-7462 or complete Form 2658 for American Sign Language (ASL) located on the Title VI webpage: <https://www.Michigan.gov/MDOT/Programs/Title-VI>. Request should be made at least five days prior to the meeting date. Reasonable efforts will be made to provide the requested accommodation or an effective alternative, but accommodations may not be guaranteed.

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

If a previously DBE certified firm has had their eligibility as a DBE removed, and it has been less than 5 years since the date of the firm's most recent onsite review and is now seeking recertification in the DBE program; MDOT investigators may – at the discretion of MDOT management – choose to conduct a limited review of the firm's eligibility in lieu of a full investigation. A limited review of DBE applicant's eligibility would be narrowed to include areas in which the firm has changed since the previous DBE certification investigation, and may not require an investigator to conduct an onsite review.

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.

If additional information is required, all information requested will be used to determine if the firm meets the eligibility standards listed in 49 CFR Part 26 Subpart D. All findings will be included in the on-site report.

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 is 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.

## **Completion of Application Process**

The on-site report is completed by compliance staff and a recommendation is made to OBD management. OBD management reviews the recommendation in the report and determines if the applicant meets eligibility standards established in federal regulations and state law and approves or denies the firm.

## **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 Annual

Affidavit stating that there have been no changes that would affect the firm's eligibility to participate as a DBE, due on their certification anniversary date.

Complete, notarized affidavits must be returned annually on the anniversary date of your certification with the appropriate supporting documentation. DBEs are not required to submit PNW statements with their Annual Affidavit. As part of the Annual Affidavit documents, the disadvantaged owner must submit the DBE firm and all affiliate firm's most recent complete federal income tax return(s) or request for an extension filed by the firm. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service (IRS). To confirm business size, MDOT requires the firm to provide federal taxes with its Annual Affidavit submission. Annual Affidavits may be submitted online by registering with MILogin and requesting access to the **MDOT MUCP** application at <https://MILoginTP.Michigan.gov/>.

If a firm fails to provide their Annual Affidavit and tax information in a timely manner, they will be deemed to have failed to cooperate under regulatory requirement 49 CFR §26.109.

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

MDOT must be notified, in writing, of any changes that 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. 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 their MUCP certifying agency of any changes in any current contact information within 30 days of making the changes.



## MDOT Denial Process

If grounds for a determination of certification ineligibility are sufficient, the OBD field services managers will mail the firm a Notice of Certification Denial, which will contain 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. The appeal letter to the US DOT must contain information and arguments on why the denial should be reversed. 49 CFR Part 26.89 describes the process for appeals to the US DOT.

Appeals should be mailed to:

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

**NOTE:** Firms denied DBE certification must wait **12 months** after the effective date of the final decision before reapplying for DBE certification. If an appeal is pending with the US DOT, the firm does not have to wait for a decision but may reapply at the end of the 12-month waiting period.

## Summary Suspension of Certification

The MDOT OBD shall suspend the DBE certification of a firm if:

- A firm's owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- When there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified.
- When a DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an Annual Affidavit of no change under §26.83U).

- The concerned operating administration may direct OBD to take action if it determines that information available is sufficient to warrant immediate suspension.

When a firm is suspended pursuant 49 CFR Part 26 (paragraphs (a) or (b)), OBD shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part §26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible, notwithstanding its changed circumstances, within 30 days of receiving this information. The decision to immediately suspend a DBE is not appealable to the US DOT.

Upon review of the request for reinstatement, OBD will either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR Part §26.87, listed within this program procedure under "DBE Certification Eligibility Removal and Appeal Process."

If OBD commences a decertification proceeding, the suspension remains in effect during the proceeding. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required, is appealable to the US DOT.

## **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 the notice of intended removal of eligibility to appeal to the committee.

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

Members of the MUCP Removal of Eligibility Committee, other than the agency that 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 \$30.40 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](http://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.
- G. If the firm fails to comply with the submittal of their Annual Affidavit and supporting documentation as required by 49 CFR 26.83(j) by the firm's certification anniversary; or if the firm fails to cooperate with requests for additional information or documentation that MDOT has determined is necessary to maintain the firm's aDBE certification.

If a firm has been removed for failure to file an Annual Affidavit and supporting documentation in accordance with 49 CFR 26.83(j), MDOT may – at the MDOT manager's discretion – reinstate DBE certification status to previously DBE certified firms if the circumstances surrounding their certification removal meet the following criteria:

1. The firm was removed for a failure to cooperate with DBE regulations by not submitting an annual affidavit and/or required supporting documentation only. Firms whose certifications have been revoked for reasons other than a failure to cooperate with the submittal of annual documentation will not be eligible for reinstatement.
2. The firm has subsequently filed a completed annual affidavit that meets all current federal requirements and has submitted all required additional documentation.
3. The firm's removal date has been less than 90 days from the date the firm submits a completed annual affidavit and supporting documentation

## **Intent to Remove Eligibility Hearing**

The MUCP certifying agency will schedule a hearing within 60 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 90 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 that 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  
Disadvantaged Business Enterprise Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590  
Phone: 202-366-4754  
TTY: 202-366-9696  
Fax: 202-366-5575  
[S33AppealsManagementrecords@dot.gov](mailto:S33AppealsManagementrecords@dot.gov)

A firm should follow the MUCP certifying agency's administrative appeal processes before proceeding with an appeal to the US DOT.

## **E. Public Information and Complaints**

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  
Lisa S. Thompson, DBE Program Administrator  
P.O. Box 30050  
425 West Ottawa St.  
Lansing, MI 48909  
Phone: 517-335-1708  
Fax: 517-335-0945  
E-mail: MDOT-DBE@Michigan.gov

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.

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).

If MDOT determines there is no reason to believe that the DBE against whom the complaint is filed is ineligible, MDOT will inform the DBE and the complainant in writing per 49 CFR Part 26.87.

If MDOT intends to remove the DBE's eligibility to participate in the DBE program, the process for removal of eligibility shall be followed.

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 will cooperate fully and promptly with US DOT, FHWA, FTA, and FAA in a complaint investigation, compliance review, or inquiries in the DBE program.

## **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.

No recipient, contractor, or other person shall intimidate, retaliate, 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.

## **US DOT Directive to Remove a Firm's Eligibility**

1. If the US DOT believes the record provides reasonable cause to believe that a DBE certified by MDOT is not eligible, the US DOT may direct MDOT to begin proceedings to remove the DBE's certification.
2. The 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.

## **Freedom of Information Act (FOIA) Requests**

Any DBE file information must be requested through the FOIA process. The FOIA coordinator listed below maintains all required confidentiality as outlined in 49 CFR Part 26.109.

For a FOIA request, contact:

FOIA Coordinator  
Office of Communications  
Michigan Department of Transportation  
425 West Ottawa St.  
Lansing, MI 48933  
E-mail: [MDOT-FOIA@Michigan.gov](mailto:MDOT-FOIA@Michigan.gov)

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.



## F. 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. Additional information regarding DBE CUF compliance can be found in the MDOT Construction Manual, available online at

[http://MDOTWiki.State.MI.US/Construction/Index.php/Main\\_Page](http://MDOTWiki.State.MI.US/Construction/Index.php/Main_Page). The procedures in this construction manual apply to all federally funded MDOT and local agency projects that include participation of a DBE-certified company. It should be noted that this construction manual applies to all projects with work completed by DBE firms, not just projects with a DBE goal.

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 sanctions when DBEs do not perform a CUF on their federally funded projects.

### **In order to perform a CUF on a US DOT-assisted contract:**

- DBEs must be responsible for execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved.
- The DBE must also 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.

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 the firm's eligibility to participate as a DBE.
- A DBE does not perform or exercise responsibility for at least 50 percent of the total cost of its subcontract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

The following bullets describe possible CUF violations:

#### **Management**

- Supervision of the DBE's employee(s) is performed by another contractor or personnel associated with another company
- The DBE provides little or no supervision of contracted work
- The DBE's superintendent is not a regular, full-time, exclusive employee of the DBE
- The DBE hasn't been issued a subcontract, purchase order, or other contractual document

- The DBE firm's owner is not aware of the status of the work, the employees and/or the performance of the business
- The DBE company owners are rarely or never seen

#### Equipment

- The equipment is used by the DBE firm but the payments are deducted by the prime contractor
- The equipment used by the DBE firm belongs to another contractor with no formal long-term lease agreement (large equipment, such as a crane, is an exception)
- Magnetic equipment signs and markings cover another company logo or other information

#### Workforce

- Movement of DBE employees to/from other contractors
- Employee(s) paid by the DBE and/or prime contractor
- Employee(s) working for the DBE and another company
- Employee(s) not familiar with DBE company supervisors/key personnel

#### Materials

- Materials for the DBE are ordered and/or paid for by another contractor
- Joint (two-party) checks are sent directly to DBE suppliers without the knowledge or consent of the DBE
- The DBE does not deliver the agreed to joint check to its supplier(s)
- Materials or supplies to be obtained by the DBE are delivered to, billed to, or paid for by another contractor
- The prime contractor puts requirements on the DBE regarding where and/or from whom to purchase the project materials

#### Performance

- DBE firm work is being done jointly by the DBE firm and/or another contractor
- The work to be performed is outside of the DBE's known experience or capability (DBE certification/prequalification categories)
- The DBE performs work without a subcontract, purchase order, or other signed contractual document
- A DBE subcontracts more of its work than is customary or standard industry practice
- DBE participation on a project is artificially inflated
- Lack of evidence of ownership, control and/or independence of the DBE
- The DBE works for only one prime contractor or a large portion of the firm's contracts are with one contractor

NOTE: Not every red flag means there is a CUF violation. However, notice of red flag(s) should be documented and reported to OBD.

A DBE subcontractor listed and approved in the Contractor Good Faith Efforts (MDOT Form 2653 & 2653D) or an approved substitute DBE (MDOT Form 0196) cannot be terminated without MDOT's prior written consent for good cause (see the "Post Award Good Faith Efforts and DBE Substitution Requests" section found in the "Good Faith Effort Processes"). Per 49 CFR Part 26.53 (f), the prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor obtains written approval (by MDOT using Form 0196). Unless approval is provided for DBE substitution, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE (approved by MDOT using Form 2653 & 2653D).

Prime contractors 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. All forms are available online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "MDOT Forms."

## CUF Reviews and Outcomes

MDOT's field staff, which includes but are not limited to inspectors, engineers, and CUF compliance staff, conducts field monitoring of contractors to assure that DBE firms perform a CUF and that work committed to DBE companies is actually performed by said companies. This will be accomplished through the use of Form 4109, Commercially Useful Function (CUF) Review. Completion of this form is required for all DBE companies on all federally funded projects, including projects with no DBE goal. This includes DBE truckers, suppliers and other vendors where a subcontract is not required. In many cases, construction staff will need to reference the DBE commitment information to ensure that all companies are reviewed. Form 4109 is available online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "MDOT Forms." Completed 4109 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 DBE companies provided a CUF. This certification will be noted on Form 1105, Final Estimate Package Memo. The certification language options will be as follows:

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

*performed by the respective companies with the exception of the following companies which have been forwarded to the Office of Business Development (OBD) for further investigation.*

*Companies:* \_\_\_\_\_

Investigations are done on DBE firms that may not be 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). The DBE firm will be given an opportunity to present material(s) to rebut the alleged violation(s).

Failure to attend a conference may result in the removal of work classification(s) and/or NAICS codes. 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 the following possible outcomes:

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; however, firms may reapply for removed work classification(s) and/or NAICS code(s) on a case-by-case basis once the CUF investigation is resolved.
4. MDOT may remove a firm's DBE certification 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 the 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. If DBE 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 contractor is responsible for notifying the project engineer and OBD immediately if they have evidence that a DBE may not be performing a CUF. The prime contractor 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 violation will be reported to the Contract Performance Evaluation Review Team (CPERT). The CPERT will, per its procedures, review the violation to review the next steps.
3. Serious violations or evidence of DBE 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 DBE Participation Toward Contract Goals**

Per 49 CFR Part 26.55, when a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals. The following guidelines detail what can be counted:

1. Count the entire amount of that portion of a construction contract (or other contract not covered in #2 below) 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).
2. 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 it is determined that the fee is reasonable and not excessive as compared with fees customarily allowed for similar serves.
3. 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. The only exception to this rule is listed under Trucking.

## **DBE Credit and CUF**

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a CUF on that contract. If a firm is not currently certified as a DBE (in accordance with the certification standards of 49 CFR Part 26) at the time of execution of the contract, the firm's participation cannot be counted toward any DBE goals.

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

## **DBE Truckers**

The following factors are used in determining whether a DBE trucking company is performing a CUF, per 49 CFR Part 26.55:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. OBD requires the DBE trucker to submit its updated equipment information on an annual basis or when changes are made to its fleet used for DBE credit.
3. 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.
4. 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.
5. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receive credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

*Example:* DBE Firm X uses two of its own trucks on a contract. It leases two

trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

6. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

*Example:* DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

For purposes of this section regarding trucking, 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. Leased trucks must keep a copy of the signed lease agreement (sent to OBD) in the truck covered by the lease agreement and furnished to MDOT representatives upon request. A lease agreement template (MDOT Form 4111) is available on the forms page.

DBE truckers must submit a completed DBE Heavy Construction Trucking Worksheet (MDOT Form 4101) for approval by OBD prior to working on a project. The trucks listed on Form 4101 must meet the initial requirements above for approval. Form 4101 accompanies the signed DBE participation sheets (MDOT Form 2653, Section D) commitment. Both forms are available at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "MDOT Forms."

Throughout the life of the project and until final payment is received, the DBE trucker must submit a DBE Trucking Compliance Report (MDOT Form 4100) for each DBE participation form approved, as requested by OBD.

## **DBE Suppliers**

DBE supply credit can be counted toward DBE goals as a manufacturer, regular dealer or broker on a contract-by-contract basis as follows:

If the materials or supplies are obtained from a DBE acting as a manufacturer, 100 percent of the cost of the materials or supplies count toward DBE goals.

- A manufacturer operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required as specified under the contract and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE acting as a regular dealer, 60 percent of the cost of the materials or supplies count toward DBE goals.

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- A regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  - MDOT does not insist that every single item the DBE firm supplies be physically present in the firm's store, warehouse, etc., before it is sold to a contractor. However, the establishment in which the firm keeps items it sells to the general public should be more than a token location. For example, a mere showroom, the existence of a hard-copy or online catalog, or the presence of small amounts of material that make questionable the ability of the firm to effectively supply quantities typically needed on a contract are generally not sufficient to demonstrate that a firm regularly deals in the items.
  - In some circumstances, items are "drop-shipped" directly from a manufacturer's facility to a job site, never being in the physical possession of or transported by a supplier. In many such cases, the supplier's role may involve nothing more than contacting the manufacturer and placing a job-specific order for an item that the manufacturer then causes to be transported to the job site. In such a situation, the supplier's role may often be better described as that of a "broker" or "transaction expeditor" than as a "regular dealer." In such a case, DBE credit is limited to the fee or commission the firm receives for its services.
- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.



A broker, with respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, may count toward DBE goals the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided MDOT determines the fees to be reasonable and not excessive as compared to fees customarily allowed for similar services. However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.

If the firm does not provide any CUF (i.e., it is simply inserted as an extra participant in a transaction), then no DBE credit can be counted.

## **Guidance for DBE Participation as Suppliers**

The successful bidder/prime contractor is responsible for compliance with the governing DBE regulations (49 CFR 26.55) 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 DBE regulations.

DBE-certified suppliers must comply with all requirements and specifications outlined in MDOT's Materials Quality Assurance Procedures Manual. This manual is available at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT). Choose the "Business" dropdown, then "Construction" then "MDOT Standard Specifications and Reference Publications."

In order to count DBE supplier 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 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 DBE with the DBE's supplier. DBEs that act as regular dealer-bulk items will need to provide information on their delivery equipment and accounts with their suppliers.
2. The DBE must arrange for the delivery of materials it supplies for the project. Documentation of the DBE's delivery of the materials (such as equipment information, bills of lading, delivery tickets, load tickets, invoices, bank statements, etc.) must be maintained by the DBE and submitted if requested by MDOT.
3. The DBE 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 DBE is

supplying the project's material. The DBE must be able to supply all lease agreements upon request by MDOT.

4. DBEs must pay their suppliers with their own funds. The prime contractor is not to pay the DBE's suppliers 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-Bulk Petroleum Suppliers:**

Upon first receipt of a proposed transaction that includes a DBE acting as a regular dealer-bulk item (supplying petroleum products or liquid asphalt), MDOT will obtain from the DBE a completed MDOT Form 0192 (Petroleum Company Account(s) Information and Liquid Asphalt Cement Tractors and Trailers Information) and all supplemental documentation, to ensure:

- The DBE owns its own delivery/distribution equipment and has valid lease agreements in place (if supplementing its own delivery/distribution equipment).
- The DBE has accounts and lines of credit with the suppliers from which it purchases the materials it is supplying on the project.

The DBE 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.

8. **Pre-Award Approval:**

Prime contractors will submit for review the DBE Supplier Participation Affidavit (MDOT Form 0193) for approval along with the Contractor Good Faith Efforts (MDOT Form 2653D). 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 supplier is in compliance with the regulations. MDOT's Contract Services Division will receive and forward the Supplier Participation Affidavit to the designated OBD

staff for approval (similar to what is done for trucking and liquid asphalt). OBD 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. 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 DBE. (Contract Services and OBD both perform this.) The DBE must be DBE-certified in the type of work requested for DBE credit.
- OBD staff will cross-check the DBE's file and participation on other projects to determine that the DBE is not over its distribution capacity or credit limit.
- OBD staff may request a purchase order to be 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 contractor submits.
- The DBE is not allowed to lease equipment from the prime contractor or the prime contractor'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 and has acceptable leases on file with OBD.
- If a license or certification is required for the product and/or service to be provided on the project, the DBE must hold that license and/or product certification in order to perform a CUF.

#### **9. Follow-up Review:**

OBD staff may request additional information to verify whether a CUF was performed on a project.

DBE regular dealers-petroleum suppliers will be required to complete an MDOT questionnaire (MDOT Form 0194) regarding DBE supplier activities on the project. 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.

OBD staff will provide the project engineer/project office/field staff any and all documents on file necessary to complete a CUF review on MDOT Form 4109.

All forms are available online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "MDOT Forms."

## **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 form (MDOT Form 0183) is available online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "MDOT Forms."

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 for both furnishing and installing the material/work item.

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

## **G. Good Faith Effort (GFE) Process**

Please review the DBE Program Regulations 49CFR part 26.53 located on our DBE website, under “Most Requested” for more information.

### **GFE Submissions**

All bidders must provide the overall DBE percentage they have attained at the time of bid within the DBE Goal folder of the Project Bids file on all projects with a DBE goal designation.

All bidders, regardless of bid status (including when bid results are To Be Announced (TBA)), must submit the Contractor DBE Good Faith Effort form (MDOT Forms 2653 & 2653D) within five calendar days of the bid letting to MDOT-DBESheets@Michigan.gov. Submissions must also comply with the requirements shown on MDOT Form 2653.

Bidders that were not successful in obtaining enough DBE participation to meet the contract goal must submit additional GFE documentation consistent with the guidelines of Appendix A of the regulations to make it suitable for evaluation by MDOT. Form 2653 & 2653D are available online at [www.Michigan.gov/MDOTDBE](http://www.Michigan.gov/MDOTDBE), under “Resources and Forms.”

### **Efforts to Obtain DBE Participation**

Efforts to obtain DBE 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 DBE's. MDOT expects all prime contractors 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 use DBE's.

Types of actions MDOT will consider as part of the contractor's GFE to meet DBE participation goals (examples are taken from Appendix A of 49 CFR Part 26). Bidders efforts consistent with these guidelines need to be documented and provided to MDOT no later than 5 days from bid opening.

- 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 DBE's 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, written notices or e-mails to all DBE's listed in the state's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE 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 DBE's to respond to the solicitation and submit a timely offer for the subcontract. The bidder shall determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBE's in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to promote DBE 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 DBE participation.
- C. Providing interested DBE's 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 DBE's. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's 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 DBE's to perform the work.
- (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE's if the price difference is excessive or unreasonable.
- E. (1) Not rejecting DBE's 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 DBE 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 DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. 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 good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

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

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 DBE's independent actions on this project or violate CUF rules.

In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts consistent with Appendix A. At a minimum, MDOT must review the performance of other bidders in meeting the contract goal. As provided in §26.53(b)(2)(vi), MDOT will closely review all claims of the prime that the DBE costs are excessive when compared to the prime's costs to self-perform the quoted work. MDOT must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBE's listed on a contractor's solicitation to inquire as to whether they were contacted by the prime contractor. Pro forma mailings to DBE's requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

A promise to use DBEs after contract award is not considered to be responsive to the

contract solicitation or to constitute good faith efforts. Contractors unable to obtain a signed Detail Page (MDOT Form 2653D) from the DBE within five calendar days of the bid letting must submit one of the following with a completed Form 2653

A. A signed quote from the DBE within five days containing the following:

- Quote contains a statement confirming the [Name of Bidder] accepts the terms of the quote and the [Name of DBE] is committed to performing the work and/or supplying the materials specified herein.
- Expiration date to ensure the quote is valid up to the time work is performed.
- DBE quote and bidders' commitment must match, no variance of quantities or pricing is allowed.
- DBE representative's signature
- Project Number and Location
- Date of quote

The prime's commitment must be a direct reflection of the quote (with no variation). MDOT must compare the two documents to ensure the prime's commitment is what the DBE agreed to do.

A bidder who fails to meet the submittal requirements for DBE participation will be deemed ineligible for award of the contract.

Prior to award, if the DBE is performing trucking or supply work, all bidders must submit form(s) 4101 (DBE Heavy Construction Trucking Credit Worksheet) and/or 0193 (DBE Supplier Participation Affidavit), respectively, to Contract Services Division as specified on Form 2653.

Contracts will not be awarded without completed Form(s) 2653 & 2653D with all appropriate signatures and, if necessary, trucking and supplier attachments.

## **Composition of the GFE Committee**

Note: Each committee member will have an alternate:

- DBE administrator, OBD (Chair)
- Two DBE Program Civil Rights Staff
- Contract Services Division administrator or designee
- Construction Field Services Division Administrator or Designee
- Two region engineers or designees

The committee will consider the sufficiency of the evidence and documentation supporting the GFE and make a determination.



## Termination

The prime contractor must not terminate a DBE subcontractor, or any portion of its work listed on form 2653 & 2653D, without providing the DBE with proper notification, including its good cause reasons and 5 days in which to respond. The Prime must concurrently provide a copy of this notification to the MDOT DBE Liaison Officer at: MDOT-DBE@michigan.gov. This includes, but is not limited to, any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract, or instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

DBE firms can be terminated or replaced for good cause only with prior approval by MDOT Form 0196. In all cases, DBE's 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 calendar days to respond prior to Form 0196 being sent to the Project Engineer for approval. The Project Engineer will then send the form and all supporting documentation to the Office of Business Development for review and approval.

Good cause includes:

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

The prime contractor must give five days written notice to a DBE if it intends to reduce or eliminate the DBE's work for any reason. This notice must be copied to the project engineer. The DBE must respond in writing to the contractor within the five days. If required in a particular case as a matter of public necessity (e.g., safety), MDOT shall

require a response period shorter than five days. Form 0196 can be submitted to the MDOT Project Engineer for approval after the five days have elapsed.

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

If quantities for items subcontracted to DBE firms are decreased or completely deleted by MDOT, the prime vendor shall consider subcontracting other work to DBE firms to meet the DBE goal. All efforts to meet the DBE participation goal shall 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 that must be subcontracted to DBE firms.

## Post-Award GFE, and DBE Substitution

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. Once the prime is aware of not meeting the awarded DBE goal, they must follow the procedure above for termination and then the procedure for substitution under the post-award GFE requirement.

Primes are required to make a good faith effort to substitute a DBE that is unable to perform with another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. If the substitute subcontractor is a DBE, they must be included on the Contractor Good Faith Efforts form (MDOT Form 2653) and submitted to the Project Engineer and Contract Services Division for approval prior to starting work. Include any trucking or supply forms (4101 & 0193) as necessary.

If the DBE goal will not be met, a Post-Award Contractor Good Faith Efforts form (MDOT Form 2653) and all supporting documents must be sent to the Office of Business Development. This post-award GFE must be submitted within 7 calendar days of the prime vendor being made aware of their inability to meet the DBE participation goal.

Pursuant to 49 CFR Part 26.53 (f), unless consent to replace a DBE is granted by MDOT, the prime contractor shall not be entitled to any payment for work performed or materials supplied.

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

1. The DBE Removal/Substitution Request (MDOT Form 0196) must be approved by the project engineer and OBD, and
2. The Contractor Good Faith Effort (MDOT Form 2653 & 2653D) for the substitute DBE firm(s) must be submitted and approved by Contract Services Division.
  - a. If a substitute DBE is performing trucking or supply work, forms 4101 and/or 0193, respectively, must be included with Form 2653 & 2653D.

Per 49 CFR Part 26.53, if written approval by MDOT, using forms 0196 and 2653 (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 DBE firm.

## **GFE Reconsideration**

Vendors whose GFE's are found insufficient may have their GFE reconsidered. The GFE Reconsideration Committee will not consider information or documentation that was not included in the original GFE submittal.

Written reconsideration requests must be submitted within five calendar days of being notified of the GFE Committee's decision via e-mail to MDOT-GFE@Michigan.gov.

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

- MDOT Chief Strategic Impact Officer (Chair)
- MDOT Chief Operations Officer
- MDOT Chief Administrative Officer
- Bureau of Finance and Administration director

The GFE Reconsideration Committee meets monthly. The requestor will be notified of the date and time of the meeting at which the reconsideration will be held. The requestor is required to be present at the meeting in person, virtually or via phone.

The GFE Reconsideration Committee's decision will be provided by the chair of the Reconsideration Committee to the prime vendor in writing. Decisions of the GFE Reconsideration Committee are administratively final.

## **Federally Required Potential Sanctions**

Per 49 CFR Part 26.53, MDOT must include in each prime contract the clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth if the prime contractor fails to comply with the requirements of this section.

MDOT must apply the requirements of this section to DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, MDOT counts the work the DBE has committed to performing with its own

forces, as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

MDOT must require the contractor awarded the contract to make available, upon request, a copy of all DBE subcontracts. The prime contractor, all subcontractors, suppliers, and service providers shall ensure that all contracted work be performed in accordance with this part's provisions.

## H. MDOT's Small Business Program (SBP)

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 FAA, FHWA and FTA.

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:

1. Submit documentation needed to determine whether they meet US Small Business Administration (SBA) and DBE small business size standard requirements. Certified DBE firms submit this documentation as a condition of certification.
  - a. Documentation must be submitted at least one month prior to submitting a bid on an SBP project.
  - b. Documentation will be reviewed by the MDOT OBD to ensure only small businesses participate in this program.
  - c. No vendor, including affiliate firms, with three-year average gross receipts that exceed \$30.40 million will qualify for the SBP.
2. Submit documentation needed to determine whether the majority owner(s) exceed the PNW size standard. The current PNW 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. If the applicant firm is employee-owned, PNW statements from the board of directors should be submitted.
3. Be approved to work in the classification required to bid on a respective project when required by MDOT or state policy.

Prequalification requirements for construction and consultant contractors are located at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT) under "Business," click on "Contractor" or "Vendor/Consultant Services," respectively.

4. Highway construction contractors must have sufficient capacity available to be eligible to bid, as determined by MDOT, in accordance with existing requirements.

5. Consultants and suppliers must comply with state and federal requirements.

## **Annual Affidavit Required to Maintain SBP Certification**

SBP 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 stating that there have been no changes that would affect the firm's eligibility to participate as an SBP, due on their certification correspondence anniversary date.

Complete, notarized affidavits must be returned annually on the anniversary date of your certification with the appropriate supporting documentation. SBPs are not required to submit PNW statements with their annual affidavit. As part of the annual affidavit documents, the small business owner must submit the SBP firm's and all affiliate firm's most recently complete federal income tax return(s) or request for an extension filed by the firm. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service (IRS). All income tax returns must be signed. MDOT requires the firm to provide federal taxes to confirm business size with its annual affidavit submission.

If a firm fails to provide their annual affidavit and tax information in a timely manner, they will be deemed to have failed to cooperate and will be removed from the program.

## **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 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) There must be at least three small businesses qualifying to bid as a prime contractor 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 promote 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 promote 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 5 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 promote competition by small business concerns.
- AERO will encourage prime vendors to promote 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 5 percent small business participation goal, unless a waiver is granted by the MDOT Office of Passenger Transportation (OPT).
- All sub-recipient consultant projects costing more than \$500,000 and construction (including rehabilitation) projects costing more than \$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 5 percent small business participation goal will be given a 5 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.<sup>1</sup>

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 5 percent small business participation goal. The bidder must meet the 5 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 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.

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<sup>1</sup>For 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.

## **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 SBP if the firm (including its affiliates) has previous three-year average annual gross receipts that are below \$30.40 million.
2. No geographic preferences or limitations shall be imposed on any federally assisted procurement included in the program.
3. The SBP 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 SBP does not replace the MDOT DBE program or otherwise operate as a replacement for the DBE program. The SBP is race- and gender-neutral. DBE dollars earned under this program will count toward the race-neutral portion of MDOT's overall DBE goal.
6. This program does not create barriers to new, emerging and untried businesses.

# **I. Federal Equal Opportunity (EO) Requirements for Contractors**

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.

Following is a set of GFE 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, the Office of Federal Contract Compliance Programs (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.

## **J. Construction Contractor Resources**

MDOT's public website has the most up-to-date information about the department, at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT). Individuals interested in doing business with MDOT should click on "Business Links, Contractor Services." General information regarding external civil rights processes for federal-aid construction projects can be found in the MDOT Construction Manual. The construction manual is available at [http://MDOTWiki.State.MI.US/Construction/Index.php/Main\\_Page](http://MDOTWiki.State.MI.US/Construction/Index.php/Main_Page).

### **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 for specific work classifications. A complete list of prequalification work classifications can be found in the construction prequalification application following the website information below.

If prequalification is required to perform work on a particular project, it will be specified in the contract documents, and both the prime contractor and subcontractors must be prequalified in the type(s) of work desired.

Construction prequalification applications and additional information is available on MDOT's website at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT) under "Business," "Contractors," "Prequal for Construction Contractors."

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: 517-243-8267

### **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 Lettings and Bidding Process**

Construction bid lettings are held monthly. MDOT provides contract proposals and plans for each contract electronically at no cost. Proposals and plans are available on the bid letting website. To access MDOT bid letting information, go to [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Business," "Contractors," "Bid Letting."

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 proposed job site to check for any 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 specifications online, go to [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), "Maps and Publications."

For questions about the bid process, call 313-304-0223 or e-mail [MDOT-BidLetting@Michigan.gov](mailto:MDOT-BidLetting@Michigan.gov).

## **Construction Subcontracting Process**

MDOT has updated the construction project subcontracting process for current specifications and references. The subcontracting process is effective on all state and federally funded construction projects. Contractor requirements for subcontracting are described in subsection 108.01 of the 2020 Standard Specifications for Construction.

This information can be located in the MDOT Construction Manual available at [http://MDOTWiki.State.MI.US/Construction/Index.php/Main\\_Page](http://MDOTWiki.State.MI.US/Construction/Index.php/Main_Page).

## **Prevailing Wage**

All contractors are required to pay the correct prevailing wage rates to employees functioning as laborers and mechanics as defined by the Davis Bacon Act. This includes workers whose duties are manual or physical in nature and anyone working with tools or performing the work of a trade. The Davis Bacon Act requires the payment of applicable prevailing wage rates to all laborers and mechanics regardless of any contractual relationship which may be alleged to exist. Labor rates can be located in the back of

each project proposal unless superseded by addendum posted on the bid letting website. The labor compliance special provision and applicable wage rate schedules are required attachments of a subcontract (MDOT Form 1302).

This information can be located in the MDOT Construction Manual available at [http://MDOTWiki.State.MI.US/Construction/Index.php/Main\\_Page](http://MDOTWiki.State.MI.US/Construction/Index.php/Main_Page).

Need wage rate help? Contact Chris Roe at [RoeC@Michigan.gov](mailto:RoeC@Michigan.gov) or call 517-202-3716.

## **Prompt Payment Requirements**

49 CFR 26.29 requires DBE and non-DBE subcontractors to be paid promptly. MDOT interprets prompt payment to mean the prime contractor will pay each subcontractor for satisfactory performance of its contract no later than 10 calendar days from receipt of each payment the prime contractor received from MDOT. Satisfactory completion means work is completed in accordance with the contract, required paperwork is in, and MDOT has inspected and approved the work and determined the final quantities. Per 49 CFR Part 26.29(b), MDOT does not hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

The prime contractor is required to provide payment information for payments made to subcontractors and suppliers through submittal of the information via the 2124A reporting system (MERS) on a bi-weekly basis during the course of the project. Upon project completion, a hard copy of the Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments (MDOT Form 2124A) must be submitted within 30 days after project completion with actual DBE signatures (not using MERS).

Claims of failure to meet prompt payment provisions requires that the prime contractor, subcontractor, lower-tier subcontractor, or supplier must notify the alleged offending party in writing of any prompt payment violations within 30 calendar days of the date the payment was to be received. Copies of the notifications must be provided to the engineer and the prime contractor (only if the prime contractor is not the offending party). The alleged offending party must respond in writing to the claimant within 10 calendar days of receipt of the notification of failure to meet prompt payment provisions. The engineer will review the written notice and response and will verify in writing if there is a valid prompt pay violation.

Failure to comply with any of the prompt payment 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.

To view the Prompt Payment Flow Chart go to [CMU 109.08 PPSP FlowChart 04-15-2020.pdf \(state.mi.us\)](#).

Complete details regarding prompt payment can be found at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), “Reports, Publications and Specs,” “Supplemental Specs/Special Provisions,” “Special Provisions – Frequently Used (2012),” click View/Print Documents, “12SP109A Prompt Payment” (revised July 29, 2013).

Need prompt pay violation assistance? Contact Chris Roe at [RoeC@Michigan.gov](mailto:RoeC@Michigan.gov) or call 517-202-3716.

## **Forms for Construction Contractors**

All forms are available online by going to [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), “Business,” “MDOT Forms.” Additional forms can be found by clicking on “search the repository of MDOT online forms.”

## **Counting and CUF of DBE Firms on Construction Projects**

Detailed information regarding counting and CUF of DBE firms on construction projects can be found in the section title “Commercially Useful Function (CUF)”. Additional information regarding DBE CUF compliance can be found in the MDOT Construction Manual. The procedures in this construction manual apply to all federally funded MDOT and local agency projects that include participation of a DBE-certified company. It should be noted that this construction manual applies to all projects with work completed by DBE firms, not just projects with a DBE goal.

The MDOT Construction Manual is available at [http://MDOTWiki.State.MI.US/Construction/Index.php/Main\\_Page](http://MDOTWiki.State.MI.US/Construction/Index.php/Main_Page).

## **Counting DBE Construction Contractor Joint Ventures**

Construction contractor joint ventures are only allowed when the joint venture is previously approved by OBD and individually prequalified and approved to bid by the Contract Services Division. When a DBE performs as a participant in a joint venture, MDOT counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work that the DBE performs with its own forces towards DBE goals.

Joint ventures must follow all requirements for performing construction on MDOT contracts, including compliance with 49 CFR Part 26.53 and 49 CFR Part 26.55.

## **K. Consultant Resources**

### **DBE Participation on Projects with DBE Goals**

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

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 website at [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP).

Proposals will be scored in accordance with the vendor guidelines. Any potential DBE GFE 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 DBE participation (service) form (MDOT 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. A map for consideration of a GFE must be submitted using the Contractor Good Faith Efforts (MDOT Form 2653), available online at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), “Business,” “MDOT Forms.” The firm will be deemed ineligible for award of the contract unless the firm either meets the goal or receives an approved GFE letter from MDOT.

### **Prequalified DBE Consultant**

MDOT's RFPs will identify both primary and secondary prequalification classification requirements, as determined for each project. In order to be eligible to submit a proposal on a project, a company must have obtained an approved prequalification status in the applicable prequalification classification(s) listed in the RFP on or prior to the proposal due date. 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. The requirements to perform the specific work classifications are as follows:



1. Primary Prequalification Classification:

The prime consultant/vendor must be prequalified in all primary prequalification classifications identified on the RFP. They may, however, subcontract out work identified under the primary prequalification classification(s) to another prequalified consultant/vendor.

2. Secondary Prequalification Classification:

The prime consultant is not required to be prequalified in the secondary prequalification classification(s) identified on the RFP. The work, however, must be performed by a prequalified consultant/vendor, which may be either the prime consultant/vendor or a subconsultant/vendor.

In all cases, the prime consultant must perform at least 40 percent of the services, by dollar value, unless otherwise specified in the RFP. In all cases, tier one subconsultant(s) must perform at least 50 percent of the services, by dollar value of their subcontract, unless otherwise specified in the RFP.

Consultants are not permitted to joint venture for the purpose of prequalification or for the purpose of submitting project proposals. As stated above, sub-consulting is permitted as long as the sub-consultant is prequalified to perform the intended services and the sub-consultant work does not exceed the previously specified percentage of the total dollar amount of the contract.

Consultants may not share key staff employees with other companies for the purposes of obtaining prequalification. The key staff included in submitted applications must be employees of your firm and cannot be used by another firm for prequalification purposes.

Software/equipment must be owned/leased by the company applying for prequalification and key staff must be trained in its use. Shared resources/equipment will not be considered for prequalification purposes.

## **Goal-Setting Procedure for Consultant Contracts**

Step 1: The Contract Services Division's scoping engineer (or designee) will 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 and the scope of work, 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 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

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

## L. DBE Contracting Opportunities

Outside of MDOT, there are additional agencies and departments that offer contracting opportunities that, based on the types of federal funding received, are subject to DBE program requirements.

These different 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 more than 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.

Visit [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP), "News and Events" to access the resources listed below. Additional opportunities will be added as available.

### *(MITN) The Michigan bid system*

The Michigan bid system provides a way for local government agencies in Michigan to more effectively notify vendors of RFP and bid opportunities, while using shared resources to increase efficiency and reduce costs. The procurement solution delivers suppliers centralized online location to view and receive Michigan RFPs and bid opportunities from more than 100 Michigan local government agencies. See [www.mitn.info](http://www.mitn.info) for more information.

### *Department of Technology, Management and Budget*

The State of Michigan procurement contracts can be found at [www.michigan.gov/dtmb/procurement](http://www.michigan.gov/dtmb/procurement). This site also offers additional information and resources for contractors.

### *MDOT's Pure Michigan Byways Program*

From shore to shore, from border to border, across Michigan, communities large and small are joining together to drive home their heritage. They're preserving Michigan's unique recreational, scenic and historic cultural treasures, knitted together through a common thread: roads. They're encouraging travelers to slow down, take the roads less traveled, and discover the true beauty, wonder and traditions that are uniquely Michigan.

### *DNR nonmotorized trails*

The purpose of the Michigan Trails Advisory Council (MTAC) is to advise the director of the DNR and the governor on the creation, development, operation, and maintenance of motorized and nonmotorized trails in the state, including but not limited to snowmobile, biking, equestrian, hiking, off-road vehicle, and skiing

trails. For more information, go to  
<https://www.Michigan.gov/DNR/About/Boards/MTAC>.

MDOT's Aeronautics advertisements for projects

Federal civil rights regulations require air carrier airport sponsors to develop a DBE program. Airports that have established programs can be found in the above link through [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP).

FTA transit opportunities

FTA opportunities are provided at [www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP).

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

## **M. DBE Supportive Services**

MDOT offers a number of business development and assistance services for MDOT-certified DBEs in accordance with the Supportive Services provisions of 49 CFR Part 26. These services include but are not limited to:

- Workshops and conferences
- MDOT and industry-sponsored seminars and training sessions
- Networking and technical assistance sessions
- Educational/training reimbursements
- Consultant services
- Professional association membership assistance
- Subscription services assistance

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, 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 website, and
- Understanding supportive services provided.

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

## **DBE Training**

To help as many DBEs as possible in successfully navigating MDOT projects, OBD’s Supportive Services team develops and facilitates several types of trainings throughout the year. Sessions described below are designed to provide participants with an in-depth understanding of MDOT’s contracting processes and requirements.

### ***DBE ORIENTATION***

This session is designed to provide DBEs an overview of the DBE program and a general understanding of MDOT’s requirements and processes. Information covered includes:

- An overview of MDOT's contracting process
- Benefits of certification
- Requirements for maintaining certification
- Understanding GFEs
- Understanding CUF requirements
- Title VI
- DBE Supportive Services assistance
- Partnerships and Memberships

#### *WAGE AND LABOR COMPLIANCE/PAYROLL PREPARATION*

This session 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 session include an understanding of the following:

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

#### *CONSTRUCTION BID PREPARATION*

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

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

## **Business Development Program (BDP)**

The purpose of a BDP is to evaluate and provide a structured process for DBEs to receive firm-specific training and guidance to be competitive within the heavy highway or other construction marketplace. DBE program regulations found in 49 CFR §26.35 give FHWA the authority to direct state DOTs to establish a DBE BDP to assist firms in gaining the ability to compete successfully in the marketplace. The parameters of a BDP are set out in detail in 49 CFR Part 26, Appendix C. Highlights of the information in this appendix include:

- Each DBE participating in the program is subject to a program term that should consist of a developmental stage and a transitional stage. The developmental stage is designed to provide assistance for the DBE to access relevant markets

and strengthen its financial and managerial skills. The transitional stage is designed to assist participants to prepare for leaving the program.

- Each DBE participating in the program will be assigned to a contracted consultant to identify and assist with areas for process improvement such as estimating, proposal submissions, project management, cash flow management, and other areas as needed.

## **Bonding and Education Program (BEP)**

The purpose and intent of the US DOT Bonding and Education Program is to assist small business firms prepare and obtain access to capital and bonding. Becoming a bondable firm is a challenge for many disadvantaged businesses. The BEP program strives to assist businesses grow by obtaining or building bonding capacity.

This program is very hands-on with several components designed to tackle what businesses are required to do to become bond-ready. In addition, one-on-one sessions with local surety bonding professionals are added to help in assembling the materials necessary for a complete bond application. This overall goal is met by training small business owners to identify barriers, develop business tools and strengthen skillsets in an effort to reduce or eliminate those barriers.

MDOT's partnership with the US DOT Bonding and Education Program has a specific focus on DBE and small business firms in the city of Detroit and surrounding metropolitan areas. This program is tailored to businesses competing for transportation-related contracts.

The program has benefited companies in the categories of civil engineering; landscaping and road design; construction (horizontal and vertical); heating, ventilation, and air conditioning (HVAC); plumbing; snow removal; traffic and signs; asphalt and concrete paving and repair; surveying; pavement marking; and janitorial. The BEP consists of a six-week training curriculum between October and December, with a new cohort selected annually.

To be considered for the program, applicants must be the primary owner(s), key manager(s) or administrator(s) of a business that meet the following criteria:

- *Existing in business for at least two consecutive years*
- *Revenue of at least \$250,000 annually*
- *Have a minimum of two full-time employees (including owner)*
- *Past performance in construction industry*
- *Pursuing transportation-related contracts*
- *Interested in satisfying credit, capacity and character evaluations in consultation with a surety representative*
- *Have one of the following certifications/designations:*

- *Michigan Minority Supplier Development Council*
- *Service-disabled veteran-owned business*
- *Veteran-owned small business*
- *Women-owned small business*
- *Small businesses*
- *HubZone*
- *DBE*
- *SDB*
- *8(a)*

DBE owned and controlled financial institutions are not relevant to MDOT's DBE Program at this time.

For additional information, contact OBD's BEP coordinator at 313-965-2350.

## **DBE Construction Engineers and Technicians**

MDOT has assigned construction engineers and technicians by region to assist DBE companies bidding or working on construction contracts. 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 [www.Michigan.gov/MDOTDBE](http://www.Michigan.gov/MDOTDBE) under the heading “Construction Tech Contacts.”

## N. Definitions and Acronyms

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

**AASHTO** - The American Association of State Highway and Transportation Officials  
AASHTO is a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It represents all five transportation modes: air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation, and maintenance of an integrated national transportation system.

### Affiliation

MDOT uses 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.

## Assets

All the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes but is not limited to cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

## Business, business concern or business enterprise

An entity organized for profit with a place of business located in the United States and operates primarily within the United States or makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

## 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.

## Broker

See definition of Supplier DBE Credit Types.

## CFR

Code of Federal Regulations

## Contingent Liability

A liability that depends on the occurrence of a future and uncertain event. This includes but is not limited to guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

#### Contract Selection Team (CST)

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

#### Contract

A legally binding relationship obligating a seller to furnish supplies or services (including but not limited to construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.

#### Contractor

One who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit or airport program.

#### Contract Services Division (CSD)

The CSD administers MDOT's contracting processes, including bid lettings, contract awards, contractor payments, prequalification of contractors to bid on MDOT projects, contract monitoring, and purchasing.

#### Days

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or federal holiday, the period extends to the next day that is not a Saturday, Sunday, or federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

#### Design-Build Project (DB)

DB is a delivery method where both the final design and construction of a project are contracted with a single entity under one contract.

#### Disadvantaged Business Enterprise (DBE)

A DBE is a for-profit small business concern -

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

#### DBE Administrator

The designated person responsible for administering MDOT's DBE program. MDOT has designated Lisa S. Thompson as the DBE administrator:

Lisa S. Thompson, Administrator  
Office of Business Development (OBD)  
425 West Ottawa St.  
P.O. Box 30050  
Lansing, MI 48909  
E-mail: ThompsonL@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's designated DBELO is Chief Operations Officer Terri D. Slaughter. MDOT's organizational chart showing direct and independent access of the DBELO to the director of MDOT can be found in Attachment D.

Terri D. Slaughter, Chief Strategic Impact Officer  
Michigan Department of Transportation  
425 West Ottawa St.  
P.O. Box 30050  
Lansing, MI 48909  
E-mail address: SlaughterT2@Michigan.gov  
Phone: 517-335-1038  
Toll-free: 866-323-1264  
Fax: 517-335-6859

#### DOT

The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

#### 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.

#### 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, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under state law.

#### Indian Tribe

Any Native American tribe, band, nation, or other organized group or community, including any Alaska Native Corporation (ANC), which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Indians, or is recognized as such by the state in which the tribe, band, nation, group, or community resides. See definition of “tribally owned concern” in this section.

#### Joint Venture

An association of a DBE firm and 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, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

#### Liabilities

Financial or pecuniary obligations. This includes but is not limited to accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

**Manufacturer**

See definition of Supplier DBE Credit Types.

**MAP-21**

Moving Ahead for Progress in the 21st Century Act

**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

**MUCP**

Michigan Unified Certification Program

**MUCP's Memorandum of Understanding (MOU)**

The MUCP's MOU between MUCP partners streamlining certification procedures for participation in the SBA and DBE programs for small and disadvantaged businesses.

**NAICS**

North American Industry Classification System. See Primary Industry Classification definition.

**Native Hawaiian**

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

**Native Hawaiian Organization**

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

**OBD**

The MDOT Office of Business Development

**OJT**

The On-the-Job Training Program

### 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 (PNW)

The net value of the assets of an individual remaining after total liabilities are deducted. An individual's PNW does not include the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's PNW includes only his or her own 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” website at [www.Michigan.gov/MDOT](http://www.Michigan.gov/MDOT), under the "How To" section.

### Primary Industry Classification

MDOT uses the most current North American Industry Classification System (NAICS) designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual - United States, available online at the U.S. Census Bureau website: [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/).

### Primary Recipient

A recipient who receives DOT financial assistance and passes some or all of it on to another recipient.



#### Principal Place of Business

The business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

#### 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, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

#### Regular Dealer

See definition of Supplier DBE Credit Types.

#### Request for Proposal (RFP)

A solicitation, often made through a bidding process, by an agency or company interested in procurement of a commodity, service or valuable asset to potential suppliers to submit business proposals.

#### SAFETEA-LU

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

#### Small Business Administration (SBA)

The United States Small Business Administration

#### SBA Certified Firm

A firm that has a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

#### 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 has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of

groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are reputedly 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," who are enrolled members of a federally or state-recognized Indian tribe, Alaska Natives, 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), Republic of the Northern Marianas Islands, Samoa, 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;
  - (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.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

#### Spouse

A married person, including a person in a domestic partnership or a civil union recognized under state law.

## STC

### Michigan State Transportation Commission

#### Supplier DBE Credit Types

DBE supply credit can be counted toward DBE goals as a manufacturer, regular dealer or broker on a contract-by-contract basis, as provided in the following:

A manufacturer operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment required as specified under the contract and of the general character described by the specifications.

- If the materials or supplies are obtained from a DBE acting as a manufacturer, 100 percent of the cost of the materials or supplies count toward DBE goals.

A regular dealer owns, operates, or maintains a store, warehouse, or other establishment where the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

- To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as described above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
- If the materials or supplies are purchased from a DBE acting as a regular dealer, 60 percent of the cost of the materials or supplies count toward DBE goals.

A broker, with respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer can count toward DBE goals the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided MDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.

#### Transit vehicle manufacturer

Any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service for people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

#### Tribally owned concern

Any concern that is at least 51 percent owned by a Native American tribe.

#### Trns●port™

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

CAS: Construction Administration System

LAS: Letting and Award System

Web Trns●port Preconstruction

#### 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; or 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 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 DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by 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, sub recipient 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, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

# **Attachment B - Michigan US DOT Recipients Memorandum of Understanding (MOU) Agreement**

## **MISSION STATEMENT**

The Michigan Unified Certification Program (MUCP) exists to provide an effective means of communication, cooperation and collaboration among the MUCP agencies, and to enhance our ability to provide quality service to our customers through the implementation and administration of this program.

## **ORGANIZATION**

All MDOT recipient Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise-certifying agencies and non-certifying agencies, listed below, agree to participate in this MUCP Certification Agreement in accordance with 49 C.F.R. Parts 23 and 26, which state in part:

“You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP)....”

The MUCP will follow all certification procedures and standards of 49 CFR Parts 23 and 26 on the same basis as recipients; the MUCP shall cooperate fully with oversight, review and monitoring activities of DOT and its operating administrations; and the MUCP shall implement DOT directives and guidance concerning certification matters. The MUCP agencies shall ensure sufficient resources, funding and expertise to carry out the requirements of 49 CFR Parts 23 and 26. The MUCP committee of certifying agencies will make all overall policy decisions for the MUCP.

To that end, this MOU is based on the following principles:

1. Each certifying agency retains the right to certify or deny an applicant based upon that agency's policies and procedures within the guidelines, interpretation of the regulations and forms agreed upon by the certifying members of the MUCP in accordance with 49 CFR Part 26.83. These determinations are binding upon all MUCP agencies.
2. MUCP certifying agencies have agreed to purchase a database to manage certifications from each agency. The database will provide an online DBE certification database and current directory. It is the mechanism by which MUCP agencies will be notified of certification decisions. It will also give notice of meetings, trainings, contacts, and other information relevant to the MUCP's implementation. The database has been purchased by MDOT and is housed on an MDOT server. Each MUCP certifying agency will have 24-hour access to all information.

3. The MUCP will maintain a unified DBE directory containing all firms certified by the MUCP (including those from other states certified under the provisions of this 49 CFR Part 26), the information required by 26.31. The MUCP will make the directory available to the public electronically on the Internet as well as in print. The MUCP will update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made. The MUCP webpage which includes the directory and forms will be maintained by MDOT. Information concerning the status of firms requesting certification shall be entered by the appropriate certifying agency.
4. The 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 that do not follow MUCP guidelines will not be valid. The MUCP will, with cause, review any agencies certification file to determine if guidelines have been followed.
5. Each certifying agency agrees to provide information and documentation, upon request, to any out-of-state certifying agency where a DBE firm is seeking certification. All MUCP agencies agree to refer any UCP inquiries from out-of-state UCP's to the appropriate certifying agency.
6. 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.
7. Each certifying agency will annually require its DBE firms to file an Annual Affidavit to continue certification eligibility. In accordance with 49 CFR Part 26, an applicant's documentation will be kept confidential unless the certifying agency receives written approval to forward applicant information with exceptions provided within 49 CFR.
8. MUCP agencies have autonomy in making decisions regarding any certified DBE's participation on agency projects and contracts. Each MUCP agency has the authority to initiate action(s) that may affect a DBE firm's eligibility to participate on its contracts or projects without the prior approval of the initial certifying agency. The MUCP agency, where action is taken, has the responsibility of informing the other MUCP agencies within 30 days of the outcome of those actions. Any actions taken which affect a firm's

eligibility for certification will be in accordance with 49 CFR Part 26.87 and the MUCP removal of eligibility procedures. Any actions taken to remove eligibility based on the above will require full cooperation by the initial certifying agency in corresponding with the firm, scheduling hearings and providing documents to USDOT and other interested parties as required. Copies of investigation results will be kept on file at the initial certifying agency.

9. This agreement should not be construed to contravene the sovereignty of each MUCP agency in making any decision concerning the DBE programs that do not affect the certification process as governed by the MUCP.
10. Certification decisions by the MUCP certifying agencies shall be binding on all MUCP agencies within the state of Michigan. All certifications will be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE as required by 49 CFR Part 26 26.81(c). Certification decisions are final as of the date of the notice of approval/denial sent by the certifying agency.
11. All obligations of MUCP agencies with respect to certification and nondiscrimination must be carried out by the MUCP and all MUCP agencies may accept certifications only from UCPs that comply with the certification and nondiscrimination requirements of 49 CFR Part 26.81(b)(3).
12. To be effective, any amendments to this MOU Agreement must be approved by the MUCP certifying agencies. The approval of those agencies designated as "certifying agencies," with the exception of the Wayne County Airport Authority, shall be sufficient for ratification of the amendment(s) to the MOU. Non-certifying agencies will be notified of proposed changes and provided sufficient time in which to present objections to all proposed amendments. All objections shall be addressed by the certifying agencies prior to amendment approval. Amendments shall contain the signature, written or electronic of the approving agencies. These amendments must also be approved by USDOT.

#### IMPLEMENTATION PRODECURES

The certifying agencies and any interested non-certifying agencies will quarterly meet to address implementation processes and issues required to assure appropriate procedures are in effect pertaining to this Michigan USDOT Recipients Memorandum of Understanding for a Unified Certification Program. The implementation procedures maybe revised, as needed, with the consent of all certifying agencies without invalidating this MOU.



1. The MUCP will establish a unified directory with web accessibility to the general public. The active date is 2004.
2. The certifying agencies have formed a committee, with representation from each certifying agency, to process DBE removals of eligibility in accordance with 49 CFR Part 26.87 for the removal of eligibility. The MUCP certifying agencies shall meet on a quarterly basis with the exceptions of information hearings or administrative reviews.
3. The certifying agencies agree on the eligibility status of firms currently certified by the MUCP agencies.
4. The MUCP certifying agencies will establish uniform formats for the following: USDOT Uniform Certification Application, Personal Net Worth form, Certificate of Eligibility, standard appeal time frames for recipients' initial Denials of Initial Requests for Certification, standard language for removals of eligibility, on-site review format, and any additional forms deemed necessary for a fully functioning MUCP. Workshops have been held and are ongoing; they are used to compare processes and reach agreement on standard letters and forms. MUCP agencies agree to enter basic information into the MUCP database as soon as possible upon receiving an application. This will allow the MUCP to avoid duplicate or conflicting certification activities.
5. Each certifying agency has appropriate agency channels for appeals of Denial of Initial Requests for Certification in accordance with 49 CFR Part 26.85. Appeals will be completed by the agency that processed the application. Once a denial is made, the applicant may appeal to USDOT in accordance with 49 CFR Part 26.89. Each certifying agency's denial and appeal process is accepted as binding on the MUCP. USDOT will request file information from and reply directly to the certifying agency. The certifying agency will then have the responsibility of notifying the MUCP.
6. On-site reviews on all firms, including SBA certified firms, will be conducted by the certifying agencies as required by 49 CFR Parts 26.81(b)(3) and 26.83(c)(1).
7. Requirements for agencies wishing to become new certifying agencies are as follows:
  - a. An agency desiring to become a certifying agency in the MUCP completes a written commitment to abide by the terms of the MOU. They specifically accept the certifying agency's responsibilities and submit it to the existing MUCP committee of certifying agencies. This written commitment also designates and identifies the individual(s) the applicant agency proposes to use to perform certification reviews and determinations and is signed by an individual within the organization with authority to bind the organization

and commit adequate resources to the successful execution of this agreement.

- b. All MUCP certifying agencies must agree to maintain trained and knowledgeable staff for certification processing in accordance with the requirements under 49 CFR and the MUCP MOU. The MUCP reserves the right to revoke the certifying privileges of any certifying agency that does not maintain trained and knowledgeable staff in accordance with 49 CFR 26 and all MUCP requirements.
  - c. The majority vote of current certifying agencies is required for an agency to become a certifying agency. The MUCP committee of certifying agencies will send a written acknowledgement to the applying agency that includes guidelines for certification and a proposed training schedule for their designated certifying staff.
  - d. The duration of training will be one year unless otherwise specified by the MUCP committee of certifying agencies. Training will consist of learning to analyze the regulations, the content of applications, company documentation, standard on-site questions, correspondence, forms, etc. Training also includes attending and assisting with at least five supervised on-site reviews with recognized and experienced MUCP certification staff and then conducting and completing at least five certification reviews that are deemed by the MUCP committee of certifying agencies to meet the requirements of 49 CFR Part 26 and all other MUCP requirements. Any variations to this requirement will be by consent of the MUCP committee of certifying agencies.
  - e. The applying agency receives written approval from the MUCP committee of certifying agencies when their designated staff has satisfactorily completed the training specified above. Approval and continued participation as a certifying agency are contingent upon having trained and knowledgeable certifying staff.
  - f. The MUCP reserves the right to revoke the certifying privileges of any certifying agency that does not comply with the certification requirements of 49 CFR Part 26 and the MUCP requirements.
8. The Removal of Eligibility Committee will consist of one representative from the following agencies:

MDOT Office of Business Development

Detroit Department of Transportation, Office of Compliance

Wayne County Human Relations Division

Representatives from the following agencies will serve as alternatives when necessary:

Detroit Metropolitan Wayne County Airport, Contract Compliance and Suburban Mobility Authority for Regional Transportation (SMART).

Each agency will have one vote except the agency that performed the initial certification. That agency 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 MUCP 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.
- 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 the department has found the individual does not meet the definition of a "socially and economically disadvantaged individual" used in 49 CFR Part 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 regulations.
- e. For federal-aid projects: if the MUCP agency received an order from the office of the US DOT Secretary of Transportation 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.
- g. All other reasons as provided in 49 CFR Part 26.

If grounds for removal of eligibility are sufficient, the firm 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 Removal of Eligibility Committee. The applicant has 30 calendar days from the date of the notice of intended removal of eligibility to appeal. The firm may be given any opportunity to rebut findings of the investigation at a conference with the certifying MUCP agency. Firms failing to attend the scheduled conference may be removed from the program for failure to cooperate.

The certifying agency will schedule a conference 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 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.

All information will be reviewed, and a vote taken. The Removal of Eligibility Committee will render a written decision based on its findings during the conference or after its administrative review on documents within 60 calendar days after the conference or its receipt of written arguments and supporting documents. If the DBE has successfully rebutted the findings detailed in the ***Notice of Intent to Remove Eligibility***, the firm will remain certified. If the intended removal of eligibility has not been rebutted, the firm is notified and DBE certification is removed.

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. Pending the US DOT's decision in the matter, the department's decision remains in effect. 49 CFR Part 26.89 describes the process for appeals to the US DOT. Firms that have had DBE certification removed must wait 12 months after the effective date of the final decision before reapplying for DBE certification.

This MOU is modified to incorporate by reference all provisions and requirements of 49 CFR Part 23, the Airport Concession Disadvantaged Business Enterprise program.

All provisions of this MOU shall be fully operation upon acceptance by the Secretary of the US DOT.

The agencies listed below agree to the MUCP and the terms of this MOU and agree to abide by its contents.

## **CERTIFYING AGENCIES**

Detroit Department of Transportation, Alicia Miller, Manager, Contract Compliance

Michigan Department of Transportation, Lisa Thompson, Administrator, Office of Business Development

Wayne County, Victoria Inniss-Edwards, Director of Human Relations

## **NON-CERTIFYING AGENCIES**

Ann Arbor Transportation Authority, Gwen Newsome, Human Resources

Battle Creek Transit, Donna Hutchinson, Grants Program Administrator

Bay Metro Transportation Authority, Tom Dominowski, Purchasing Agent

Bishop International Airport, Flint, Nino Sapone, Deputy Director

Blue Water Area Transit, Dave McElroy, Manager

Capital Area Transportation Authority, Nicole Wilson, Purchasing Manager

Capital Region International Airport, Wayne Sieloff, CEO

Cherry Capital Airport, Traverse City, Kevin Klein, Director

Chippewa County International Airport, Tami Beseau, Manager

City of Saginaw, Saginaw Transit Authority, Joshua Pavlowski, Inventory Technician

Coleman A. Young Municipal Airport, Denise Vaughn, Office Manager

Delta County Airport, TJ Reid, Manager

Detroit Transportation Corporation, Barbara Hansen, General Manager

Dickinson County Ford Airport, Tim Howen, Manager

Flint Mass Transportation Authority, Corwin Matthews, Director

Gerald R. Ford International Airport, Brian Picardat, Vice President and CEO

Grand Rapids, The Interurban Transit Partnership, Judy Devries, Procurement Services Coordinator

Houghton County Memorial Airport, Dennis Hext, Manager

Jackson Transportation Authority, Jeffrey Wickman, Government/Community Manager

Kalamazoo Metro Transit, Sean McBride, Executive Director

Kalamazoo/Battle Creek International Airport, Georgia Bryant, Purchasing Manager

Macatawa Area Express, Elisa Hoekwater, Purchasing Manager

MBS International Airport, Nicole Moses, Human Resources

Muskegon Area Transit System, James Koens, Manager

Muskegon County Airport, Jeffrey Tripp, Manager

Pellston Regional Airport, Kelly Atkins, Manager

Sawyer International Airport, Duane Duray, Manager

Southeast Michigan Council of Governments, Jody Egelton, Director

Suburban Mobility Authority for Regional Transportation (Smart), Austin Colson, Manager, DBE/EEO Programs

Twin Cities Area Transportation Authority, Alex Little, Executive Director

Wayne County Airport Authority, Detroit Metropolitan Wayne County Airport, Audrey Jones, Procurement Director, DBE LO

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**SIGNATURE PAGE**

  
MICHIGAN DEPARTMENT OF TRANSPORTATION  
LISA THOMPSON, ADMINISTRATOR

6-26-2017  
DATE

  
DETROIT DEPARTMENT OF TRANSPORTATION  
ALICIA MILLER, MANAGER

6-26-17  
DATE

  
WAYNE COUNTY HUMAN RELATIONS  
VICTORIA INNISS-EDWARDS, DIRECTOR

<sup>10E</sup>  
6-26-17  
DATE

  
WAYNE COUNTY AIRPORT AUTHORITY  
AUDREY JONES, DBE LIAISON OFFICER

6/27/2017  
DATE

# Attachment C - Exhibit 1-D: Disadvantaged Business Enterprise (DBE) Special Provisions for Design-Build Projects

In addition to the requirements of the Michigan Department of Transportation (MDOT) Disadvantaged Business Enterprise (DBE) program, the Design-Builder (DB) shall comply with the requirements of this Exhibit 1-D.

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C. Continuing Good Faith Efforts .....	3
D. Good Faith Effort Plan .....	4
E. DBE Contracts.....	5

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

### ***A. DBE GOAL AND GENERAL INFORMATION***

The DBE goal established for this contract is [Insert %] of the contract price.

The DB must understand and follow the requirements in this contract and applicable regulations including, but not limited to, 49 CFR Part 26.

The DB may establish individual contract goals for each contract, subcontract, and each consultant, subconsultant and supply and service provider agreement in amounts to ensure the overall contract goal is met.

The DBE goal may be attained by means of an approved Contractor Good Faith Efforts form 2653 & 2653D or 0182 with a Michigan Unified Certification Program (MUCP) certified DBE. The amount of goal attainment is dependent on the amount actually paid to DBEs for work performed, per the agreement.

The proposer shall make good faith efforts to include DBE contractors, subcontractors, consultants, subconsultants, suppliers and service providers in the



DB team. Furthermore, the proposer shall also make every reasonable effort to subcontract work to DBEs through good faith negotiations and/or solicitations in advance of the date specified for the opening of bids.

In order to fulfill a DBE goal, the firms utilized as DBE subcontractors, consultants, sub-consultants, suppliers, or service providers must be certified as DBEs by the MUCP prior to the award of the contract, or the selection of any new subcontractors, consultants, subconsultants, suppliers or service providers during the project. Requests for approval by the MDOT Office of Business Development (OBD) are required before contracts with DBEs are executed. The MUCP DBE Directory contains the names and addresses of all firms that are certified to perform the type of work the proposer is intending to subcontract. The MUCP DBE Directory can be accessed at the following website:

[www.Michigan.gov/MUCP](http://www.Michigan.gov/MUCP)

Firms certified by other local jurisdictions do not count toward the DBE goal. If there are questions concerning the MUCP certification status of a firm, the MUCP certification process or to obtain a copy of the MUCP DBE Directory, please call the MUCP OBD at 517-335-1708 or visit the office online at the following website:

<http://www.Michigan.gov/MDOTDBE>

To meet federal requirements, all contractors/vendors/quoters should submit MDOT Form 0168A annually to MDOT.

The DB, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The DB shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the DB 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 MDOT deems appropriate, which may include, but is not limited to:

- (a) Withholding monthly progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the contractor from future bidding as non-responsible.

## ***B. SUBMITTAL OF DOCUMENTATION***

All Proposers must provide the overall DBE percentage they have attained at the time of bid within the DBE Goal folder of the Expedite bid file on all projects with a DBE goal designation.

All bidders, regardless of bid status (as checked if available, or as submitted if TBA), must provide DBE Participation Sheets within five calendar days of the bid letting. This information must be submitted using Form 2653 & 2653D and/or Form 0182 via e-mail to [MDOT-DBESheets@Michigan.gov](mailto:MDOT-DBESheets@Michigan.gov). Submission of the DBE Participation Sheets constitute the proposer's written commitment to use the firms listed therein if they are awarded the contract.

A Good Faith Effort (GFE) Plan must be provided by the proposer that is the determined low bidder if they indicate a DBE commitment below the DBE goal. The GFE Plan must be provided to the MDOT project manager and the MDOT OBD ([MDOT-GFE@Michigan.gov](mailto:MDOT-GFE@Michigan.gov)) within five calendar days of the determined low bidder being published by MDOT.

A proposer who fails to meet the DBE participation goal or fails to provide a GFE Plan that is acceptable and approved by MDOT will be deemed ineligible for award of the contract.

The determined low bidder's failure to submit the overall DBE percentage with the bid or the determined low bidder's failure to submit the DBE Participation Sheets or a GFE Plan (if required) within five business days may result in the payment of the bid guaranty to the awarding authority if the Bid Appeal Committee denies the appeal as outlined in subsections 102.11 and 102.12 of the Standard Specifications.

The department will consider a bid irregular and may reject it if the determined low bidder did not submit the overall DBE percentage with the bid as specified above, or if the determined low bidder did not submit the DBE Participation Sheets or a GFE Plan within five calendar days of the bid letting.

## ***B. CONTINUING GOOD FAITH EFFORTS***

The proposer must continue to make good faith efforts to meet the goal throughout the life of the project.

During the term of the contract, the DB shall continue to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the contract, and that the DB meets its DBE goal. These efforts shall include but not be limited to the following:

- (a) Negotiating in good faith to obtain DBE participation both prior to and during the life of the project;
- (b) Continuing to provide assistance to DBE subcontractors, consultant, subconsultant, suppliers, and service providers in obtaining bonding, insurance, etc., if required by the contract;

- (c) Notifying MDOT and a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting approval from the MDOT OBD to obtain a substitute DBE or a DBE participation GFE;
- (d) Ensuring all vendors, including DBEs, are paid promptly for the satisfactory completion of items or partial items of work associated with the subcontract on a monthly basis, for work satisfactorily completed within the previous 30 calendar days.
- (e) Timely quarterly submission of either the Prime Contractor Statement of DBE Subcontractor Payments (MDOT Form 0164) or the Prime Consultant Statement of DBE Subconsultant Payments (MDOT Form 0165), as applicable. Credit shall not be counted toward the DBE goal until each DBE is paid for their work.
- (f) Submission by the prime contractor of a GFE Plan to show ongoing efforts made to achieve the DBE participation goal. Updates to the GFE Plan shall be submitted on a quarterly basis to the MDOT project manager and MDOT's OBD ([MDOT-GFE@Michigan.gov](mailto:MDOT-GFE@Michigan.gov)) for review and approval. Additionally, the OBD shall be notified in a timely manner of any problems which may adversely impact DBE goal attainment.
- (g) If the DB or a subcontractor responsible for obtaining DBE participation requests a substitution of a DBE firm, the DB or subcontractor must exert good faith efforts to replace the DBE firm with another DBE. If the DB seeks to terminate a DBE or substitute the work from a DBE firm to a different DBE or non-DBE firm, the DB must provide written notice (by using MDOT Form 0196) to the DBE firm, the MDOT project manager, and the MDOT OBD of the DB's intent and include the reason for the request. The DBE firm shall be provided five calendar days to respond to the DB and MDOT and indicate if they object to their termination/substitution. MDOT will either approve or reject the termination and/or substitution of the DBE firm within five days after receiving the DBE firm's response.

### ***C. GOOD FAITH EFFORT PLAN***

At a minimum, the GFE Plan must include the following information:

- (a) A cover letter describing the efforts to date to identify DBE firms. Include any steps taken by the proposer to engage firms, identify work areas for DBE firms, the reason why the DBE goal has yet to be obtained, and the anticipated level of DBE participation that is anticipated to be obtained through continuous good faith efforts.
- (b) DBE Plan: The DBE Plan must include the proposer's plan to obtain DBE participation after the project is awarded. The plan must include the areas of work anticipated to utilize DBE firms and the anticipated time frames for engaging the DBE firms.
- (c) MDOT Form 2653: Provide a completed Form 2653 & 2653D. If areas of the form are not able to be completed, provide a detailed description of why it cannot be completed.

- (d) Provide justification if a DBE subcontractor, consultant, subconsultant, supplier, and service provider's quote is not used not used.

When reviewing an initial GFE Plan, MDOT may, at its sole discretion, take any of the following actions:

- (a) Approve the plan as originally submitted.
- (b) Require additional information to be provided prior to approving or rejecting the plan.
- (c) Require additional commitments or activities to be made by the DB prior to approving or rejecting the plan.
- (d) Approve a GFE to the DBE Goal prior to award of the contract.
- (e) Make no changes to the original DBE Goal until after all good faith efforts have been made by the DB.
- (f) Reject the plan as originally submitted or as submitted with GFE's.

The GFE Plan must be updated and submitted to the MDOT project manager and the OBD ([MDOT-GFE@Michigan.gov](mailto:MDOT-GFE@Michigan.gov)) every three months after contract award. At a minimum, updated plans must:

- (a) document the efforts taken during the previous three months to obtain DBE participation,
- (b) document the DBE firms brought under contract during the period and the dollar value of their work,
- (c) document the total amount of DBE firms under contract to date,
- (d) describe future good faith efforts that will be used to meet the DBE goals of the project,
- (e) document and any item that should be considered by MDOT regarding the efforts to meet the DBE goals of the project.

If a determined low bidder is unable to meet the DBE participation goal, additional information will be required relating to their initial GFE Request submittal as specified in subsection 102.18 in accordance with current department DBE Program Procedures.

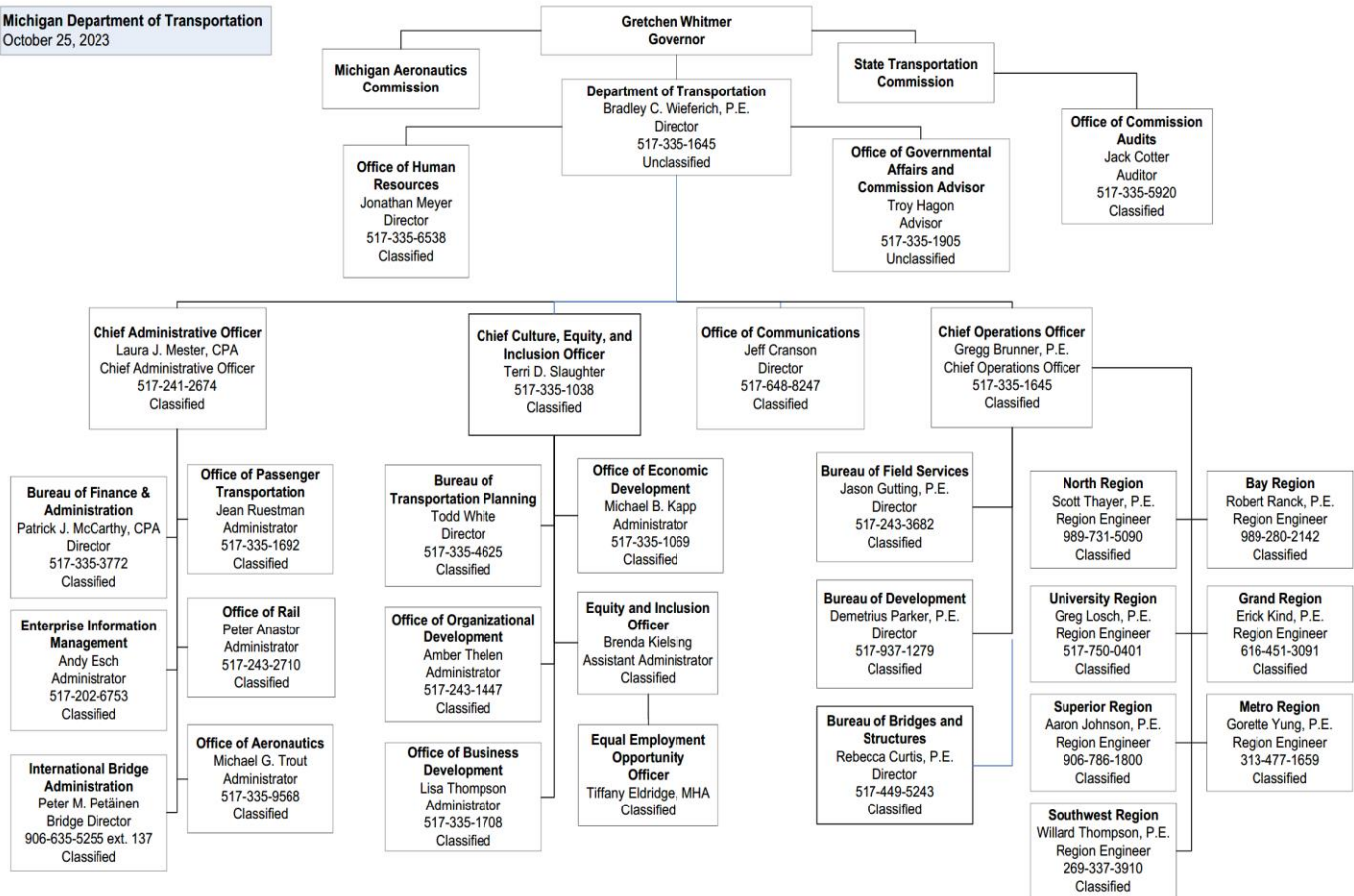
The contract will not be awarded until a GFE Plan is approved by the department.

## ***E. DBE CONTRACTS***

Whenever a DBE is selected as a subcontractor, consultant, subconsultant, supplier, or service provider and the DBE participation has not been previously approved, the DB or his/her designated DBE liaison officer shall provide the MDOT OBD with executed Contractor Good Faith Efforts Forms 2653 & 2653D (construction version) or 0182 (consultant version) and all related forms for approval before the DBE begins work. Failure to ensure that a DBE commitment has been approved by MDOT before the DBE begins work on the project may result in the work being deemed ineligible for credit toward the DBE participation goal.

# Attachment D – MDOT's ORGANIZATIONAL CHART

Michigan Department of Transportation  
October 25, 2023



# **Attachment E - 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 certification.

3. 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.)
4. 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 a 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 that 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.