

Disadvantaged Business Enterprise

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# PROGRAM PROCEDURES

# MDOT

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Michigan Department of Transportation

Revised July 10, 2009

# Michigan Department of Transportation DBE Program Procedures

The Michigan Department of Transportation (MDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (US DOT) at 49 CFR Part 26. MDOT has received federal financial assistance from US DOT, and, as a condition of receiving this assistance, MDOT has signed an assurance 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 of the DBE program found at 49 CFR § 26.1. The department shall develop a program procedure containing the following basic objectives consistent with STC policy.

These program procedures shall be implemented by MDOT as follows:

## **Responsibilities**

The Director of the Michigan Department of Transportation shall be responsible for implementation of the DBE program. The Director shall designate a DBE Liaison Officer to administer the program. The DBE Liaison Officer shall be responsible for administering all aspects of the DBE program within the department.

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 the department's contracts and for maintaining an accurate and up-to-date directory of DBEs certified in Michigan.

## **Goals**

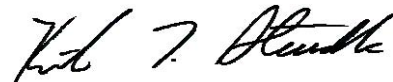
The department shall annually recommend DBE goals to the STC. Upon receiving the recommended goals, the STC shall establish appropriate goals as required by federal and state law.

The department will use race neutral and race-conscious means to meet the recommended overall goal. The department shall set one combined goal for DBEs that involves federal-aid funds.

Contract goal(s) shall be set for specific 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 the Michigan Department of Transportation April 2004



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Director

## Table of Contents

<b>Program Authority</b> .....	4
<b>Funding Sources of the MDOT DBE Program</b> .....	4
<b>Program Information</b> .....	5
Overall DBE Participation Goal .....	5
Complaint Procedure .....	5
Source for Additional DBE Program Information.....	5
Web address: <a href="http://www.michigan.gov/mdotdbe">www.michigan.gov/mdotdbe</a> .....	5
Public Information Guidelines.....	6
Freedom of Information Act (FOIA) Requests.....	6
Reporting False, Fraudulent, or Dishonest Conduct.....	6
MDOT Fraud & Abuse Hotline .....	6
Intimidation or Retaliation Acts Prohibited.....	6
<b>A. Michigan Unified Certification Program (MUCP)</b> .....	7
MUCP Certifying Agency Requirements .....	7
Annual Affidavit and Personal Net Worth.....	8
<b>B. Certification Standards for DBE Applicants</b> .....	9
<b>C. MDOT DBE Certification Procedures</b> .....	16
Purpose.....	16
Processing of Applications .....	16
Certification Procedures for New Applicants.....	18
MUCP Removal and Appeal Process .....	19
<b>D. Commercially Useful Function (CUF)</b> .....	22
DBE’s Management.....	23
DBE’s Work Force .....	23
Equipment.....	23
Trucking Operations .....	24
Commercially Useful Function Reviews and Outcomes .....	26
<b>E. Third-Party Complaints</b> .....	28
US DOT Directive to Remove a Firm’s Eligibility .....	29
<b>F. DBE Program Goals</b> .....	30
Overall DBE Goal Determination.....	30
Additional Information About Steps One and Two.....	30
The Contract Selection Team and DBE Participation Goals on Highway Projects .	33
<b>G. Doing Business with MDOT Construction Contractors</b> .....	35
Construction Prequalification .....	35
Assistance with Construction Contracts .....	35
Exception to Construction Prequalification Requirement .....	36
Bidders List.....	36
Bid Process - Construction Contracts .....	36
Wage Rates .....	37
Bid Lettings.....	37
Counting DBE Participation Toward Contract Goals.....	38
Counting DBE Joint Ventures .....	39
Counting DBE Suppliers.....	40

Counting DBE Participation When DBE's Are Paid.....	41
Highway Construction Contractor Good Faith Effort (GFE) Application .....	41
Examples of Good Faith Efforts to Meet DBE Participation Goals .....	43
Contractors Good Faith Effort (GFE) Application – MDOT Form 0188.....	44
Pre-Award Good Faith Efforts.....	44
Post-Award Good Faith Efforts .....	44
Where to Submit Good Faith Effort Applications (MDOT Form 0188) and Supporting Documentation .....	45
Good Faith Effort Appeals.....	46
Prompt Payment.....	47
<b>H. THE DBE Directory .....</b>	<b>50</b>
<b>I. Business Development &amp; Assistance Programs .....</b>	<b>51</b>
<b>J. Technical Assistance.....</b>	<b>52</b>
<b>K. DBE Orientation.....</b>	<b>53</b>
<b>L. Multi-Modal Transportation &amp; Non-Traditional Contracting.....</b>	<b>54</b>
Responsibilities.....	54
Contract Opportunities.....	54
Note about Transit Vehicle Manufacturers.....	54
<b>M. Definitions.....</b>	<b>55</b>
<b>Attachment A .....</b>	<b>63</b>
<b>Assurances that Recipients and Contractors Must Make.....</b>	<b>63</b>
<b>Attachment B.....</b>	<b>66</b>
<b>Special Provision for Prompt Payment.....</b>	<b>66</b>
<b>Attachment C .....</b>	<b>68</b>
<b>Mentor/Protégé DBE Development Program .....</b>	<b>68</b>
<b>Forms For Construction Contractors .....</b>	<b>73</b>

## Program Authority

### MDOT's DBE Program

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

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

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

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

## Funding Sources of the MDOT DBE Program

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

1. 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 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.
2. 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.
3. Airport funds authorized by 49 U.S.C. 47101, et seq.
4. The 2005 SAFETEA-LU Act (Safe, Accountable, Flexible, Efficient, Transportation, Equity Act: A Legacy for Users) Pub. L 190-59.

## **Program Information**

### Overall DBE Participation Goal

Each year MDOT will publish a notice of its proposed overall DBE participation goal. This is done to inform the public of the proposed goal, to request input and to announce the goal methodology and other information available upon request.

### Complaint Procedure

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

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

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

### Source for Additional DBE Program Information

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

Michigan Department of Transportation  
Office of Business Development  
Disadvantaged Business Enterprise (DBE) Program  
P.O. Box 30050  
425 West Ottawa Street  
Lansing, Michigan 48909  
Toll-free Phone: 1-866-323-1264  
Fax: 1-517-335-0945  
Web address: [www.michigan.gov/mdotdbe](http://www.michigan.gov/mdotdbe)

## Public Information Guidelines

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

## Freedom of Information Act (FOIA) Requests

For a Freedom of Information request, contact:

Michigan Department of Transportation  
Attn: FOIA Officer  
P.O. Box 30050 425 West Ottawa Street  
Lansing, Michigan 48909  
517-373-2297  
FOIA Fax Number: 517-241-1448

## Reporting False, Fraudulent, or Dishonest Conduct

MDOT will report any false, fraudulent, or dishonest conduct in connection with the DBE program, to the United States Federal Highway Administration Office of the Inspector General for appropriate action.

## MDOT Fraud & 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: 1-866-460-6368 or 1-517-241-2256

## Intimidation or Retaliation Acts Prohibited

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

## **A. Michigan Unified Certification Program (MUCP)**

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USDOT 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 Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and Federal Transit Administration (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 a MUCP Task Committee. This Committee agreed to certify DBE firms based on mandatory reciprocity among the certifying entities in the state. As a result, these organizations will certify DBEs in Michigan:

Michigan Department of Transportation  
Office of Business Development  
425 W. Ottawa  
P. O. Box 30050  
Lansing, Michigan 48909  
DBE Program toll-free telephone (Lansing Office): 1-866-323-1264  
DBE Program toll-free telephone (Oak Park Office): 1-866-323-4009  
DBE Program fax: 1-517-335-0945

SMART  
DBE/EEO Programs  
660 Woodward Avenue, Suite 900  
Detroit, Michigan 48226  
Telephone: 313-223-2113  
Fax: 313-223-1505

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

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

### **MUCP Certifying Agency Requirements**

Each certifying agency will notify all MUCP agencies and certification applicants in writing, within a reasonable period of time, of their certification decision for each new applicant. Certifying agencies must keep complete files on applicants and provide

information as required. Certifications which do not follow MUCP guidelines will not be valid.

Each certifying agency agrees to provide information and documentation, upon request, to any out-of-state certifying agency where a MUCP 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. Information on the certifying agency will be available on the MUCP web page.

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

#### Annual Affidavit and Personal Net Worth

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

## **B. | Certification Standards for DBE Applicants**

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

### Small Business Size

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

No business shall be considered small if average annual gross receipts of the business and its affiliates exceed \$20.41 million over the previous three fiscal years, even though receipts do not exceed the threshold for the applicable NAICS code. This maximum size standard is adjusted periodically to offset inflation.

### Social and Economic Disadvantage Status

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

A signed, notarized statement of personal net worth must be submitted for each individual owner of a firm whose ownership and control are relied upon for DBE certification. Supporting documentation, including personal tax returns, is required as evidence. If an individual's personal net worth exceeds \$750,000 (excluding the value of the individual's primary residence and ownership interest in the firm seeking certification), the individual's presumption of economic disadvantage is rebutted and he or she will not qualify for this program.

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

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

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

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

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

#### Individual Determinations of Social and Economic Disadvantage

Persons who are not presumed to be socially and economically disadvantaged, including individuals whose presumed disadvantage has been rebutted, may apply for DBE certification. The applicant has the burden of demonstrating, by a preponderance of evidence, that they are socially and economically disadvantaged. No individual whose personal net worth exceeds \$750,000 (excluding the value of the applicant's primary residence and interest in the firm seeking certification) may

be deemed economically disadvantaged. In making determinations of social and economic disadvantage for non-presumptive individuals, the MUCP will use the standards put forth by 49 CFR Part 26, Appendix E.

### Ownership

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

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

### Control and Independence

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

#### 1. Operational Control

- A. Of primary importance is the extent to which the disadvantaged owner actually operates the business. The disadvantaged owner must show he or she makes the basic decisions in the daily operations of the firm.
- B. The disadvantaged owner must have an overall understanding of and technical competence and experience directly related to the type of business in which the firm is engaged and in the firm’s operations. Technical competence is defined as experience, education, expertise and/or background sufficient to afford the disadvantaged owner an ability to control the critical operations of the firm’s business, including but not limited to

operations such as estimating, marketing, sales, field supervision and bidding. Technical competence in this sense does not mean expert knowledge. It means substantial knowledge of the technical requirements of the industry for which the business seeks certification.

- C. If state or local law requires a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged person(s) who owns and controls a potential DBE firm must possess the required license or credential.
- D. The disadvantaged owner should be able to show that basic decisions pertaining to the daily operations of the business are made independently. If a disadvantaged owner relies on the decisions of other employees in the critical operations of the firm's business, the disadvantaged owner must show he or she can intelligently use and critically evaluate information presented in making decisions concerning the daily operational activities of the business.
- E. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- F. In order to be viewed as controlling a firm, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

## 2. Managerial Control

- A. The disadvantaged owner must have the power to direct or cause the direction of the management and policies of the firm and to make day-to-day, as well as long-term decisions on matters of management, policy and operation.
- B. The disadvantaged owner should be able to show there are no restrictions through corporate charter provisions, by-law provisions, contracts, voting rights or powers, bank signatures, or any other formal or informal devices which would limit control of the firm.
- C. The disadvantaged owner should be able to show, clearly through documentary evidence, that he or she controls the firm in areas such as, but not limited to:
  - (1) The disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

- (2) In a corporation, disadvantaged owners must control the board of directors.
  - (3) In a partnership, one or more disadvantaged owners must serve as general partners with control over all partnership decisions.
  - (4) The disadvantaged owner must have the power to hire and fire any persons to whom key control operations have been delegated.
- D. Differences in wages and other compensation between the disadvantaged owner and non-disadvantaged individuals will be considered as a factor in determining who controls the firm.

### 3. Independence

- A. An independent firm is one whose viability does not depend on its relationship with other firms or individuals. Factors which will be reviewed in determining independence pursuant to 49 CFR § 26.71 include relationships with non-DBE firms in areas such as personnel, facilities, equipment, financial and/or bonding support and other resources.
- B. A firm is considered controlling or having power to control a certified DBE or an applicant when one or more of the following circumstances are found to exist:
- (1) Officers, directors, employees, or principal stockholders of one firm serve as a working majority of the board of directors or officers of the DBE firm.
  - (2) The DBE shares common office space and/or employees and/or equipment and/or other facilities with another business (whether or not for a purported fee or other consideration) particularly where both firms are in the same or related industry or field of operations or were formerly affiliated.
  - (3) Former officers, directors, principal stockholders and/or key employees of one firm organize a new DBE business in the same or related industry or field of operation and serve as its officers, directors, principal stockholders and/or key employees.
  - (4) One firm gives or promises to give the other subcontracts, financial or technical support and/or other facilities (whether or not for a purported fee or other consideration).
- C. The certifying agency will also consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of

the potential DBE and non-DBE firms compromise the independence of the potential DBE.

- D. The potential DBE's relationships with prime contractors will be examined to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of a potential DBE.
- E. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to show that a firm is an independent business.
- F. A business operating under a franchise or license agreement may be certified if it meets the standards and the franchiser or licensor is not affiliated with the franchisee or licensee.
- G. DBE firms entering into a joint venture with another DBE firm must have the joint venture certified as a separate entity.

### Work Classifications

MUCP certifying agencies will grant certification only in specific types of work in which the disadvantaged owners have the ability to control the firm.

Vendors who wish to work for the Michigan Department of Transportation in areas which require service or construction prequalification must also become prequalified. Prequalification and DBE certification are not the same. Information and applications for service or construction prequalification are available on the Web at <http://www.michigan.gov/mdot>. Choose the "Doing Business" link, then choose either the construction or service prequalification link, as applicable, under the section entitled "How to...."

### Annual Affidavit Required to Maintain Certification

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

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

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

The MUCP certifying agency must be notified, in writing, of any changes which would affect the size, disadvantaged status, ownership, or control requirements, or

of any material changes in the information provided in the certification application as follows:

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

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

## **C. | MDOT DBE Certification Procedures**

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### Purpose

Certification procedures are designed to ensure all businesses participating in the Michigan Department of Transportation (MDOT) Disadvantaged Business Enterprise (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 federally-funded projects with DBE contract goals in the State of Michigan, provided individual agency requirements which apply to all firms, DBE and non-DBE alike, have also been met.

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

Note: Firms certified by SBA as 8(a) or SDB can forward the complete certification application, forms and packages submitted to the SBA in lieu of the DBE Uniform Certification Application, pursuant to 49 CFR § 26.84. Additional information and an on-site review may be required for certification.

### Processing of Applications

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

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

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

Application packages are processed according to the date the complete package is received.

### On-Site Visits

On-site visits required by 49 CFR § 26.83(c) (1) are conducted at the applicant’s principal place of business with firms seeking first-time certification. During the on-site visit, the firm’s principal officers and key employees must respond in writing to

questions designed to clarify information contained either in the application package or received at the on-site visit. Questions are designed to verify whether or not the applicant meets DBE certification standards. Accommodations for those with difficulty reading or writing are available upon request.

During the on-site visit, MUCP certifying agency personnel 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 states DBE certification agency requests
4. Company changes affecting eligibility
5. Third-party written complaint
6. Changes in the firm's principle business activity

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

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

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

At the end of the on-site visit, the firm's principal officers may copy the written questions and the written responses. In the event that copying facilities are not available, the department 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.

## Certification Procedures for New Applicants

### Intake

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

### On-Site Visit/Field Monitoring

An MDOT representative conducts an on-site visit at the applicant's business office and visits job sites where the firm is working.

### Application Process Complete

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

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

### MDOT Denial Process

If grounds for a determination of certification ineligibility are sufficient, the MDOT Chief Deputy Director mails the firm a Notice of Certification Denial. The Notice of Certification Denial contains reasons for the decision and advises the applicant of its right to appeal to the United States Department of Transportation.

### Appeals to the United States Department of Transportation (USDOT)

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

Appeals should be mailed to:

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

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

### MUCP Removal and Appeal Process

#### Process for Removal of Eligibility for DBE-Certified Firms

The MUCP Removal of Eligibility Committee consists of representatives from each certifying agency. The Removal of Eligibility Committee will process DBE removals of eligibility in accordance with 49 CFR §26.87. The committee meets on a monthly basis.

MUCP DBE applicants may appeal Notices of Intent to Remove Certification through a conference with the MUCP Removal of Eligibility Committee. This Committee consists of members from Michigan certifying agencies other than the agency requesting removal of your firm's eligibility to participate in the DBE program.

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

Removal of eligibility to participate in the 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 §§ 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.

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 thirty (30) calendar days from the date of the delivery of the notice of intended removal of eligibility to appeal.

#### Intent to Remove Eligibility Hearing

The MUCP certifying agency will schedule a hearing within thirty (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 on 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 review or consider any new developments/changes in the firm's organization, structure or operations that occurred after the date of the Notice of Intent to Remove Eligibility or any changes that were not documented in the certifying agency's file as of that same date. The Removal of Eligibility Panel will render a written decision based on its findings during the conference, within sixty (60) calendar days after the conference.

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

If no written request for appeal is received as specified above, the intended determination to remove eligibility will become final and have full force and effect. Firms who have their eligibility removed must wait twelve (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 ninety (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. The department'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.

Send appeals to the following address:

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

A firm has the option of first exhausting the MUCP certifying agency's administrative appeal processes before proceeding with an appeal to the U.S. Department of Transportation.

## **D. | Commercially Useful Function (CUF)**

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

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. Such pass-through arrangements are in violation of federal regulation and may result in removal of eligibility to participate as a DBE.

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

In order to do a CUF, DBE's must:

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

49 CFR § 26.53 provides that on contracts with a DBE goal prime contractors may not terminate, for convenience, an approved DBE subcontractor working on a US DOT-assisted contract and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without prior written consent from the Administrator of the Office of Business Development. When a DBE subcontractor fails to complete its work on the contract for any reason, a prime contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The DBE substitute shall perform at least the same amount of work under the contract as the DBE that was terminated.

Appropriate administrative remedies will be invoked in the event a prime contractor fails to comply with requirements.

Detail regarding performance of a CUF is provided below:

### DBE's Management

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

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

### DBE's Work Force

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

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

### Equipment

DBE's may lease equipment consistent with standard industry practice.

1. It is not acceptable to bid a project based on a "labor and materials only" basis. The DBE must either own or lease equipment used to do its work. The cost of equipment leased from the prime or an affiliate of the prime may not be counted toward DBE participation goals.
2. A DBE must submit lease agreements for all equipment leased. Lease/rental agreements must be separate from the subcontract and must specify the terms

of the lease arrangement. Operation of leased/rented equipment should be subject to the full control of the DBE.

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

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

### Materials

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

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

With prior approval, a joint or two-party check between a subcontractor, a prime contractor, and a materials supplier may be used to guarantee payment for materials. A copy of the "Application to Use Joint Checks" (MDOT Form 0183) is included in the appendix at the end of this booklet entitled "Forms for Construction Contractors." For more information about joint checks, please refer to Section G on page 35, "Doing Business with MDOT Construction Contractors".

### Trucking Operations

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

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

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided for the four trucks owned by DBE Firms X and Firm Y. Credit not to exceed the dollar value of services provided by the DBE truckers may also be awarded for four of the six trucks provided by non-DBE Firm Z, In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

DBE Truckers must submit a completed DBE Heavy Construction Trucking Worksheet (MDOT Form 4101) with their signed DBE Participation (MDOT Form 0178) commitments. Examples of these forms are included in the appendix at the end of this booklet entitled "Forms for Construction Contractors."

5. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## Commercially Useful Function Reviews and Outcomes

The department conducts field monitoring of prime contractors to assure that DBE certified firms working on contracts perform a CUF. Investigations are done on DBE firms suspected of not performing a CUF as a result of field monitoring or based on receipt of a third-party complaint. Investigations showing a DBE may not have complied with all CUF requirements on a project(s) will result in the firm being called in for a conference with the department to discuss the alleged violation(s). Non-attendance to a conference may result in the removal of certification for failure to cooperate. Following the CUF conference, the DBE Administrator will review information received and make a determination regarding the DBE firm's compliance with the federal regulations. Firms are notified in writing of the determination. Determinations include:

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

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

Prime contractors are responsible for their subcontractors. When DBE certified firms are determined to have violated federal regulations by failing to perform a CUF, prime contractors are notified in writing and given the opportunity to provide explanation. Prime contractors who are 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 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. FHWA will be notified that the department has overstated the reported DBE participation for this project.
3. The departments' Prequalification Committee will be notified of the prime's DBE participation deficiency on the project.
4. Primes are subject to a wide variety of sanctions, ranging from a written notice of violation, up to and including loss of bidding privileges or criminal charges.

## **E. | Third-Party Complaints**

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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.

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

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

- B. If the department determines there is no reason to believe that the DBE against whom the complaint is filed is ineligible, the department will inform the challenging party in writing.
5. The complainant may request, in writing, a review of the decision before the DBE Administrator. The request must be made within 30 calendar days of the date of written notification of the decision. If no request for review is submitted within thirty (30) calendar days, the decision is final.

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

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

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

All participants in the DBE program, including contractors using DBE's 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 the program procedures and appropriate action against the firm may be taken.

## **F. | DBE Program Goals**

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### Overall DBE Goal Determination

Pursuant to requirements of 49 CFR Part 26, MDOT annually reviews its overall goal for DBE participation on contracts funded in whole or in part with funds from FHWA, FAA and FTA. The overall goal reflects the relative availability of DBEs who are ready, willing and able to work for MDOT, in comparison to all firms within MDOT's marketplace. The overall goal is MDOT's determination of the level of DBE participation which could be expected, absent the effects of discrimination.

### 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.
- Weight availability figures by the respective contract dollars to be expended in each type of federally-assisted prime and subcontract.
- Aggregate the resulting weighted availability figures.

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

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

### Additional Information About Steps One and Two

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

The step one 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.

<b>Projected weighted dollar value x DBE relative availability = Weighted DBE relative availability</b>	
<b><u>Estimated federally-assisted heavy const. contract dollars</u></b> <b>Total federally-assisted program dollars</b>	<b>= Projected weighted dollar value heavy const. (%)</b>
<b><u>Number of DBEs in heavy construction</u></b> <b>Number of non-DBEs and DBEs in heavy construction</b>	<b>= DBE relative availability in heavy construction (%)</b>
<b>Projected weighted dollar value x DBE relative availability</b>	<b>= Weighted DBE relative availability heavy const.</b>

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 one base figure. These factors include:

- Median past DBE participation
- Comparative analysis of the mix of projects, the dollar volume of the projected program and the availability of DBEs in the types of work needed
- The number of projects which may not be conducive to DBE race-conscious participation designations due to small project size
- Publication of the goal within the media

- The number of projects which may not be conducive to DBE participation due to the location of the contract
- DBE certification activity
- Initiatives taken by the MDOT to encourage participation by small businesses
- Historical data involving approved waiver/modification requests
- Obtain feedback and engage in consultation of the proposed goal with industry, minority and women's groups as required in 49 CFR § 26.45 (g)(1)

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

Once the step one 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.

- Race-neutral 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 since 1999 when the current federal regulations governing the DBE program took effect.

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

- Race-conscious 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

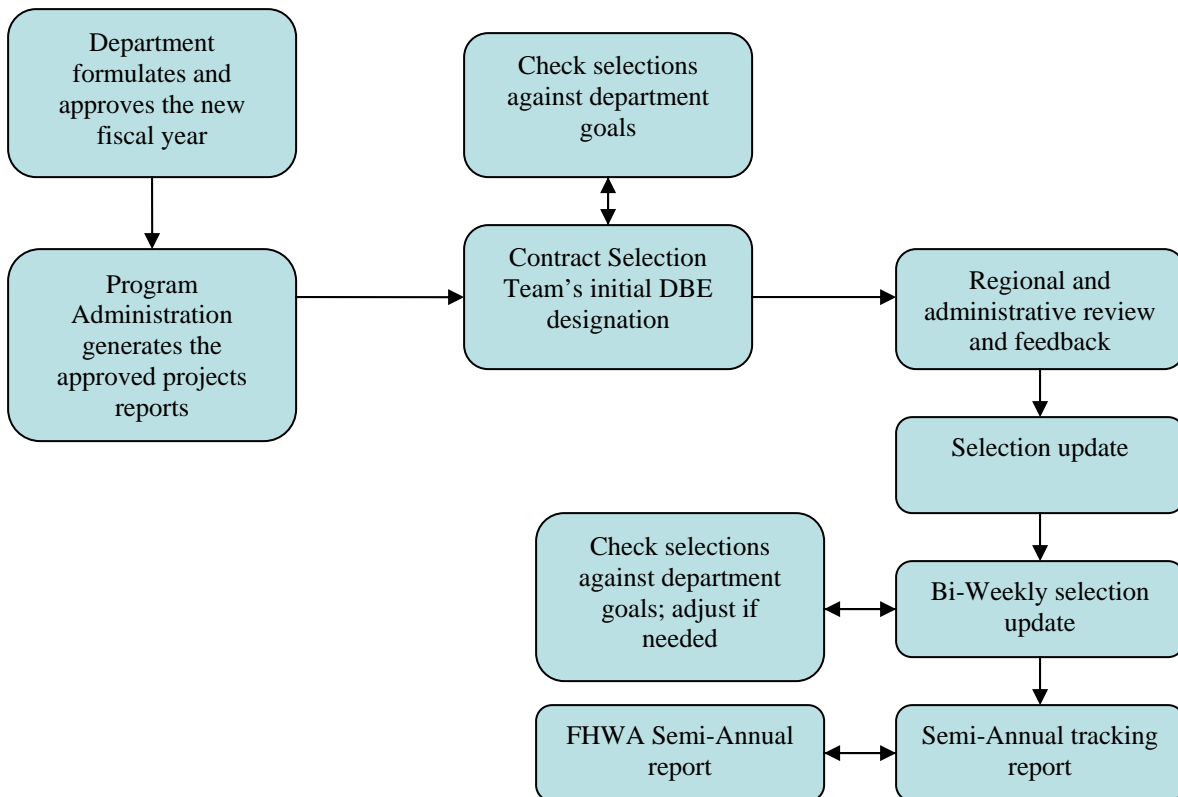
DBE participation obtained during the course of the year and as necessary, will make appropriate modifications in its use of RN and/or RC measures in accordance to 49 CFR § 26.45.

The Contract Selection Team and DBE Participation Goals on Highway Projects

MDOT has established a contract selection process.

The Contract Selection Team (CST) was established to review upcoming opportunities and related work classifications. This is done throughout the fiscal year on federally-assisted trunkline projects. The CST consists of representatives from the DBE Program and the bureaus of Finance and Administration, Highways and Transportation Planning. The team examines each approved federally-funded project and recommends a level of DBE participation. Recommendations are based on available project information.

A flow chart of the contract selection and review process is shown below:



The CST will base its recommendations on:

1. Work classifications involved in each project.
2. The capability and availability of certified/pre-qualified DBE firms.
3. The population of DBE firms throughout the state.
4. Estimated dollar value of each project.
5. An effort to distribute the designation equitably.
6. An effort to meet the department's approved annual goal.
7. Information received after Region reviews.

Composition of the CST:

- a. Office of Business Development – 3 (including the Team Chair)
- b. Regions – 2 Representatives
- c. Finance & Administration – 1 Representative
- d. Highway Development - 1 Representative
- e. Highway Delivery - 1 Representative
- f. Transportation Planning - 1 Representative
- g. Passenger Transportation - 1 Representative
- h. Executive Office members from other areas may be brought in on an as needed basis.

Two-thirds of the members must be present to have a quorum and conduct business.

A DBE Project Review Panel exists to resolve any issues related to the contract selection process, committee members are the:

Director, Office of Business Development or designee, Chair  
Chief Operations Officer or designee  
Bureau of Highways – Division Administrator or designee  
Bureau of Finance & Administration - Division Administrator or designee

Ex-Officio members from other areas of the department may be brought into this team on an as needed basis.

## **G. | Doing Business with MDOT Construction Contractors**

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MDOT's public Web site has the most up-to-date information about the department at <http://www.michigan.gov/mdot>. Individuals interested in doing business with MDOT should click on the "Doing Business" link and then click the "Disadvantaged Business Enterprise" link.

### Construction Prequalification

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

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

Construction prequalification applications are available on MDOT's Web site at <http://www.michigan.gov/mdot> . Click the "Doing Business" link, then, under the section entitled "How To..." click "Get Construction Prequalified." Contact the DBE program toll-free at 1-866-323-1264 for assistance, or call or write the MDOT Contracts Services Division:

Michigan Department of Transportation  
Contracts Services Division  
P.O. Box 30050  
Lansing, Michigan 48909  
Telephone: 517-335-4281  
Fax: 517-373-3707

### Assistance with Construction Contracts

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

### Requirements to Bid on MDOT Construction Contracts as a Prime Contractor

1. Prequalification in the required work classification(s)
2. Net numerical rating equal to or greater than the rating in the project advertisement.

3. Complete a Form 1300EZ, Statement Current Contracts
4. Send Form 1300EZ to MDOT's Contract Services Division at 517-373-3707, not less than 6 days or more than 30 days before the date of the specific bid letting. Check the 1300EZ filing schedule on MDOT's Bid Letting Web site at <http://www.michigan.gov/mdot> , then click the Bid Letting link on the right side of the screen.
5. Contractors who fail to submit a 1300EZ form within the required time period will not be issued bidding documents.

#### Exception to Construction Prequalification Requirement

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

#### Bidders List

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," which is located on the Web at: [http://www.mdot.state.mi.us/oeo/bidders\\_quoters/](http://www.mdot.state.mi.us/oeo/bidders_quoters/). Firms without internet access may complete a hardcopy of the Vendor Availability Questionnaire (MDOT Form 0168) and submit it to the Office of Business Development, DBE Program. Cooperation in providing vendor availability information helps MDOT comply with federal regulations at 49 CFR 26.11(c), which require MDOT to maintain a list of firms bidding on prime contracts and bidding or quoting subcontracts on DOT-assisted projects. This information should be submitted annually.

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

#### Bid Process - Construction Contracts

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

## Wage Rates

Before bidding, be sure you know the employee wage rates which apply to your project. Federal wage rate laws often require contractors to pay higher employee wages and benefits than you may pay on other projects. Federal wage rates apply not only to prime and subcontractors, but could apply to truckers and suppliers who take part in contract work. Please read Bureau of Highways Instructional Memorandum (BOHIM) 2008-06, titled "Prevailing Wage Oversight Procedures," for more information.

BOHIMS are available at <http://www.michigan.gov/mdot>. Click the "Maps & Publications" link on the left of the screen. Under "Manuals & Guides," click "Manuals, Guides, Advisories & Memos," then click "BOH-Instructional Memorandums" to chose BOHIM 2008-06.

## Bid Lettings

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

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

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

- a. Plans and proposals for projects located in a specific MDOT Region are available for viewing at the respective Region office. Contact information for each Region office is available on the Web at <http://www.michigan.gov/mdot> by choosing the "About MDOT" link on the left side of the screen.
- b. Project plans and proposals can also be purchased. Refer to the Bid Letting Web site for the most current list of printing vendors. Current printing vendors contracted by MDOT are:

Capital Imaging, Inc.  
2521 E. Michigan Ave.  
Lansing, MI 48912  
Ph: 517-482-2292  
Fax: 517-487-1920

Motor City Imaging, LLC  
36060 Industrial Rd  
Livonia, MI 48150  
Ph: 313-342-7480  
Fax: 313-342-7481

Office Max  
2020 E. Grand River Ave  
Okemos, MI 48864  
Ph: 517-347-8988/347-3599  
Fax: 517-347-3381  
Email: [bss0266@officemax.com](mailto:bss0266@officemax.com)

3. Submit a current 1300EZ. Fax to: 517-373-3707.
4. To bid as a prime contractor, a contractor must order bid documents from MDOT. Complete a Bid Document Request Form 1381 and Fax to: 517-373-3707.
5. Once bid documents have been received, complete the document(s) according to the instructions on the Bidder's Checklist included in your bidding document(s) packet.

Bids received after the official closing of bids will not be accepted.

For questions about the bid process, e-mail using the Bid Letting link on the Contractors' Service Center Web site, or phone 517-373-2341.

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

#### Counting DBE Participation Toward Contract Goals

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

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

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

Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for

the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar serves.

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

### Counting DBE Joint Ventures

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

### Counting and Commercially Useful Function

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

- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE 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.
- (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

### Counting DBE Truckers

A DBE may lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided for the four trucks owned by DBE Firms X and Firm Y. Credit not to exceed

the dollar value of services provided by the DBE truckers may also be awarded for four of the six trucks provided by non-DBE Firm Z, In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

DBE Truckers must submit a completed DBE Heavy Construction Trucking Worksheet (MDOT Form 4101) with their signed DBE Participation (MDOT Form 0178) commitments. Examples of these forms are included in the appendix at the end of this booklet entitled "Forms for Construction Contractors."

For purposes of this paragraph, 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 display the name and identification number of the DBE.

#### Counting DBE Suppliers

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

- (1) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
- (2) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
- (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

### Counting DBE Participation When DBE's Are Paid

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

### 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 nor an affiliate of the prime may be used to guarantee payment for materials. A copy of the "Application to Use Joint Checks" (MDOT Form 0183) is included in the appendix at the end of this booklet entitled "Forms for Construction Contractors."

An acceptable joint check arrangement must include the following:

- The prime contractor/payor can not 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/payor) negotiates the quantities, price and delivery of materials;
- The prime contractor/payor issuing the check acts solely as guarantor;
- The subcontractor releases the check to the supplier;
- The arrangement is short term (no more than two seasons) with the purpose being the subcontractor's establishment or increase of a credit line with the material supplier.
- The subcontractor is responsible to both furnish and install the material/work item.

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

### Highway Construction Contractor Good Faith Effort (GFE) Application

There are two circumstances in which an application may be submitted for consideration of a contractor's good faith effort toward meeting the DBE participation requirement for a specific project. First, at the time of contract award, the apparent low bidder does not propose to meet the project goal; and second, during the execution of the contract, the planned subcontracts to DBE firms do not materialize.

MDOT exercises the utmost diligence in setting the DBE participation goal on a project-by-project basis. MDOT's method is in compliance with the requirements of the federal regulations at 49 CFR Part 26.

In order for MDOT to evaluate the contractor's good faith efforts to meet the goal and to provide the basis for a determination on the Good Faith Effort application, the department must have access to all of the facts necessary for the evaluation.

This guidance is intended to outline the minimum information and documentation MDOT needs for consideration of the Good Faith Effort application. Each request for modification of the contract goal is considered on its own merits. Simply following the required steps and submitting a request in the prescribed format does not ensure that the request will be approved.

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

1. Good cause (such as the DBE firm being unable or unwilling to perform).
2. Prior approval by MDOT OBD.

Prime Contractors may not terminate for convenience an approved DBE working on a federally-assisted contract and then perform the work of the terminated DBE without prior consent of the OBD. Contractors are required to make a good faith effort to replace a DBE that is unable to perform with another DBE. The substitute DBE must be approved by the OBD prior to starting work. Please send to the following address and cc: the Project Engineer:

Michigan Department of Transportation  
Attn: DBE Program Administrator  
Office of Business Development  
P. O. Box 30050  
Lansing, Michigan 48909  
Fax: 517-335-6859

**DBEs must provide written notification to the Project Manager, with a copy to the Office of Business Development, when they are unable or unwilling to perform all or part of their committed work. Notification must be provided within ten (10) business days of the date they were to work.**

If quantities for pay items subcontracted to DBE firms are decreased or completely deleted by the Department, the prime should consider subcontracting other work to DBE firms to meet the DBE goal. All efforts to meet the DBE participation goal should be documented. On the date the contractor becomes aware that the DBE

goal will not be met, the amount of contract work left at that point must be carefully reviewed to determine available work which may be subcontracted to DBE firms.

#### Examples of Good Faith Efforts to Meet DBE Participation Goals

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goal being achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation;
- C. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation;
- D. Negotiating in good faith with interested DBEs. Evidence of such negotiations should include the names, addresses and telephone numbers of DBEs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting and evidence as to why additional agreements could not be reached for DBEs to perform the work;
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by MDOT or the contractor;
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs; and
- I. Evidence of the contractor's record of exceeding DBE participation goals on prior projects.

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

### Contractors Good Faith Effort (GFE) Application – MDOT Form 0188

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

The "Contractors Good-Faith Effort Application" contains a checklist identifying the types of documents which should accompany the application. Form 0188 is included in the "Forms for Construction Contractors" appendix.

### Pre-Award Good Faith Efforts

If an apparent low Bidder is unable to fulfill the DBE participation goal and submits a pre-award request to modify the goal, the contract will not be awarded until a determination is made by the Department. The low Bidder must submit the "Contractor's Good Faith Effort Application" and supporting documentation to the address shown on the application.

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

If the Department's Good-Faith Effort Committee requests additional good faith efforts or denies the request to modify the DBE participation goal, the apparent low Bidder will have ten (10) business days from the date of receipt of the determination to comply or appeal. If the Bidder fails to comply with the Department's determination within ten (10) business days, the Bidder will be deemed ineligible for award of the contract.

A pre-award good faith effort request may be withdrawn without penalty if the apparent low Bidder obtains sufficient participation to meet the DBE participation goal.

### Post-Award Good Faith Efforts

If during the course of completing an awarded MDOT project a contractor finds themselves unable to fulfill their DBE participation requirements, they may submit a Good Faith Effort Application. To request a post-award modification request, the

Contractor must submit a completed "Contractor Good-Faith Effort Application" (MDOT Form 0188) and supporting documentation. The contractor must submit evidence of good faith efforts to meet the DBE participation goal and include proof that on the date the Contractor became aware of the DBE goal would not be met, the amount of contract work remaining was carefully reviewed to identify other work which could be subcontracted to DBE firms. Post award applications must be submitted within fourteen (14) days of the contractor being made aware of their inability to meet the DBE participation.

Modification requests shall be reviewed by the Good Faith Effort Committee within twenty (20) business days of receipt of a complete GFE application package. The apparent low Bidder will be notified of the Committee determination by fax and certified mail. Incomplete applications will be returned.

GFE investigators may request additional documentation to clarify or supplement information provided by the apparent low Bidder. Processing of the GFE application will be suspended until documentation requested has been received.

If the Good-Faith Effort Committee determines the Contractor demonstrated sufficient good faith effort to achieve the goal, the Department will modify the goal as requested. If the Department denies the request or modifies the goal in a manner other than that requested, the department will notify the Contractor by certified mail within twenty (20) business days of receipt of the request. The notification letter will include steps the Contractor may take to remedy the DBE participation deficiency.

#### Good Faith Effort Appeals

A Contractor receiving an adverse determination related to their request for modification of the DBE participation goal may appeal the determination. Written appeals must be submitted to the Office of Business Development within ten (10) business days of the Contractor's receipt of the Good Faith Efforts decision. The appeal panel's determination will be provided by certified mail to the Contractor within fifteen (15) business days of the determination.

#### Where to Submit Good Faith Effort Applications (MDOT Form 0188) and Supporting Documentation

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

## Composition of the Good Faith Effort Committee

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

Two-thirds of the members or a representative must be present in order to have a quorum and conduct business. When scheduling conflicts occur, Committee members may submit their decision and any additional questions or comments electronically. Final GFE Application decisions require consenting votes from at least four (4) committee members.

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

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

### Good Faith Effort Appeals

Contractors whose request for waiver or modification of the DBE participation goal has been denied, may appeal the decision.

Written appeals must be submitted within ten (10) business days of the contractor's receipt of the Good Faith Effort Committee's decision to:

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

The composition of the Appeals Panel is as follows:

- Office of Business Development Director (Chair)
- Bureau of Finance and Administration, Bureau Director or designee
- MDOT Operations Officer or designee
- MDOT Chief Deputy Director or designee

The Appeals Panel's decision will be provided by the DBE Administrator through certified mail to the contractor within fifteen (15) business days. Two-thirds of the members or a representative must be present in order to have a quorum and conduct business.

Decisions of the Appeals Panel are administratively final.

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

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

#### Prompt Payment

The following is added to Section 109 of the Standard Specifications for Construction.

**109.10 Prompt Payment.** The prime Contractor agrees to pay each subcontractor for the work associated with their subcontract no later than ten (10) calendar days from the date the prime Contractor receives payment from the Department for said work. Release of payment from the Department for any work is confirmation that the Department has determined the work to have met the standards of satisfactory completion as defined below. If the prime Contractor has concerns about the satisfactory completion of subcontractor work items, this must be brought to the Engineers attention in advance of payment to the prime Contractor. This notice may give the prime Contractor the option to not release all subcontractor funds within the ten (10) calendar days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.

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

- A. **Satisfactory Completion.** Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:
1. Upon preliminary review, the Engineer finds the work completed in accordance with the contract, plans and specifications; and
  2. Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., has been received and reviewed by the Engineer.

**The determination of whether work meets the standards of satisfactory completion is the responsibility of the Engineer and not the prime Contractor.**

- B. **Less than full payment release.** Any delay or postponement of payment from this time frame, or partial payment to a subcontractor, may occur only upon receipt of written approval from the Engineer.
- C. **Non-Payment Claims.** All notifications of failure to meet prompt payment provisions shall be referred by the subcontractor to the prime Contractor and must be made in writing, with a copy to the project engineer. All notifications should be sent within thirty (30) calendar days of the date the payment was to be received. The prime Contractor must respond in writing to the subcontractor, with a copy to the project engineer and the Engineer of Construction and Technology, within seven (7) calendar days of receipt of the notification of failure to meet prompt payment provisions. Failure of the prime contractor to respond may result in sanctions. **The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.**

The prime Contractor must include in all subcontract agreements notice to subcontractors of their right to prompt payment, and of the Department's prohibiting prime Contractors from holding retainage from subcontractors under 49 CFR 26.29.

The prime Contractor must include in all subcontracts, language providing that the prime Contractor and Subcontractor will use an approved alternative dispute resolution process to resolve prompt payment differences. The arbitration of the dispute will be handled through a member of the American Arbitration Association, 1 Town Square, Southfield, Michigan (248-352-5500), or another third party agreed to by both the prime Contractor and the Subcontractor. The parties must agree on a mediator or arbitrator within twenty five (25) calendar days after a written complaint has been sent by the subcontractor. The cost of mediation or arbitration will be borne by the parties as determined by the mediator. Qualified costs of mediation, for certified DBE's, will be paid by the Department based on current procedures. The DBE must contact the Office of Business Development for information on current

procedures and to receive reimbursement. Outcomes of the alternative dispute resolution will be provided to the Engineer within 10 days of the decision.

Copies of all documents related to prompt payment claims will be provided to the Engineer by the prime Contractor for inclusion in the project files.

Failure of the prime Contractor to comply with prompt payment provisions may result in sanctions. Sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction of prequalification ratings; and/or withdrawal of bidding privileges.

## H. | THE DBE Directory

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The Michigan Uniform Certification Program (MUCP) directory of all certified DBE firms in Michigan is available on the Web at <http://www.michigan.gov/mdotdbe>. Under the section titled "Directories" click the link "Search MUCP Directory for all certified DBEs in Michigan."

A hardcopy directory of DBE certified firms is available from MDOT. The directory is provided to those who express an interest. The directory is published and updated upon request.

The DBE directory includes the following:

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

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

Michigan Department of Transportation  
Office of Business Development  
DBE Program  
P.O. Box 30050  
425 West Ottawa Street  
Lansing, Michigan 48909  
Toll-free phone: 1-866-323-1264

## I. | **Business Development & Assistance Programs**

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

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

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

Please contact the MDOT DBE Program, toll-free, at 1-866-DBE-1264 for a current list of available services.

## **J. | Technical Assistance**

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

Technical assistance is provided to DBEs in several different areas; 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

## **K. | DBE Orientation**

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The department conducts orientation sessions for newly certified DBEs which include an explanation of the program requirements and an overview of the process in contracting with MDOT.

The orientation sessions provide materials and information regarding several different areas. The following items are examples:

1. Contract opportunities
2. Maintaining DBE certification eligibility
3. MDOT's contracting process including bidding, reporting, and contract administration requirements, and prompt payment
4. Available technical assistance
5. DBE Supportive Services

## **L. | Multi-Modal Transportation & Non-Traditional Contracting**

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### Responsibilities

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

### Contract Opportunities

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

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

### Note about Transit Vehicle Manufacturers

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

For further information about opportunities on non-traditional contracts, contact:

- Bureau of Passenger Transportation Division Administrator at 517-335-2533.
- MDOT's Heritage Route Program Manager at 517-335-2934

## **M. | Definitions**

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

### **Affiliation**

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

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

### **Alaska Native**

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

### **Alaska Native Corporation (ANC)**

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

### **Appeals**

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

Applicant

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

Broker

See definition of "Supplier."

Certification Assistance Representatives (CAR)

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

Chief Deputy Director

The Chief Deputy Director is responsible for approving *Notices of Certification Denial*. MDOT's Chief Deputy Director is Jacqueline G. Shinn:

Jacqueline G. Shinn, Chief Deputy Director  
Michigan Department of Transportation  
425 West Ottawa Street, P.O. Box 30050  
Lansing, Michigan 48909  
E-mail address: ShinnJ@michigan.gov  
Telephone 1-517-241-5442

Contract Selection Team (CST)

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

Commercially Useful Function (CUF)

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

Compliance

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

**Contract**

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

**Contractor/Subcontractor**

A vendor who participates in a contract.

**DBE Administrator**

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

Patricia A. Collins, Administrator  
Office of Business Development (OBD)  
425 West Ottawa Street, P.O. Box 30050  
Lansing, Michigan 48909  
E-mail address: [Collinsp@michigan.gov](mailto:Collinsp@michigan.gov)  
Toll-free telephone: 1-866-323-1264  
Fax Number: 517-335-6859

**DBE Liaison Officer**

The Liaison Officer is responsible for implementing all aspects of the DBE program and ensuring that MDOT complies with all provisions of 49 CFR Part 26. MDOT has designated Terrence M. Hicks as the DBE Liaison Officer:

Terrence M. Hicks, Director  
Office of Business Development  
425 West Ottawa Street, P.O. Box 30050  
Lansing, Michigan 48909  
E-mail address: [HicksT@michigan.gov](mailto:HicksT@michigan.gov)  
Toll-free telephone 1-866-323-1264  
Fax Number: 517-335-6859

**Disadvantaged Business Enterprise (DBE)**

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

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

#### Department

The Michigan Department of Transportation (MDOT)

#### 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.

#### DOT/SBA Memorandum of Understanding (MOU)

The agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development [8(a) BD] and Small Disadvantaged Business (SDB) programs and DOT's Disadvantaged Business Enterprise (DBE) programs for small and disadvantaged businesses.

#### Field Monitoring

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

#### Good Faith Efforts

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

#### Immediate Family Member

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

#### Indian Tribe

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

#### Joint Venture

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

**Manufacturer**

See definition of "Supplier."

**Mentor/Protégé**

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

**Native Hawaiian**

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

**Native Hawaiian Organization**

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

**Noncompliance**

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

**Operating Administration (OA)**

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

**On-Site Review**

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

**Orientation**

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

**Personal Net Worth**

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

#### Prequalification

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

#### Primary Industry Classification

MDOT uses the North American Industry Classification System (NAICS) to designate the primary business of a firm. All NAICS codes are described in the 2007 NAICS Manual which is available from the NAICS Association, 129 Lakeshore Drive, Rockaway, NJ 07866, phone 973-625-5656. The internet address is <http://www.naics.com/index.html>.

#### Primary Recipient

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

#### Principal Place of Business

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

#### Race-Conscious (RC) Measure/Program

Is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

#### Race-neutral (RN) Measure/Program

Is one that is or can be, used to assist all small businesses. Race-neutral, includes gender-neutrality.

#### Recipient

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

#### Regular Dealer

See definition of "Supplier."

#### Small Business Administration (SBA)

The United States Small Business Administration

#### SBA Certified Firm

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

### Small Business Concern

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

### Socially and Economically Disadvantaged Individual

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

- (1) Socially and economically disadvantaged.
- (2) Any individual in the following groups, presumed to be socially and economically disadvantaged:
  - I. Black Americans which includes persons having origins in any of the Black racial groups of Africa;
  - II. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - III. Native Americans which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - IV. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, 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.

### Supplier

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

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

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

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

Tribally-owned business

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

## **Attachment A**

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

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

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

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

The contractor, 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.

“102.18 Subletting Contract Work to Disadvantaged Business Enterprises (DBE)”  
Excerpted from the “2003 Standard Specifications for Construction”

The DBE portion of work set for a project, as specified in the notice of advertisement, shall be made available to Department certified Disadvantaged Business Enterprises (DBEs). Compliance with the designated DBE participation goal must be met by the utilization of DBEs to perform commercially useful functions as required by 49 CFR § 26.55 of the Federal Register. The names of the DBEs and the description of work to be performed by each will be submitted by the apparent low Bidder to the Financial Services Division of the Department within fourteen (14) days after the furnishing of the contract and bond forms to the apparent low Bidder. This information will be submitted on the forms provided by the Department and signed by an authorized signer for each certified DBE and the prime Contractor. A

Bidder who fails to submit the names of certified DBEs and the description and value of work to be performed by each DBE, sufficient to meet the DBE participation goal, will be deemed ineligible for award of the contract unless the Bidder submits a request for consideration of waiver or modification of the DBE participation goal on the form and in the format required by the Department or is granted additional time to correct an inadvertent error.

- A. Pre-Award Waivers or Modifications. If an apparent low Bidder submits a request for waiver or modification of the DBE participation goal the contract will not be awarded until a determination is made by the Department. The Contractor must submit evidence of good faith efforts to meet the DBE participation goal. The Department will advise the Contractor of its decision by certified mail.

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

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

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

If the Department determines the Contractor has demonstrated a sufficient good faith effort to achieve the goal, the Department will modify or waive the goal as requested. If the Department denies the request or modifies the goal in a manner other than that requested, the Department will notify the Contractor by certified mail within twenty (20) calendar days of receipt of the request.

Requests for waiver or modification of the goal for DBE participation will be submitted to the DBE Program. The Department will evaluate the good faith efforts of the Contractor based on the direction provided by 49 CFR, Appendix A

to Part 26 - Guidance Concerning Good Faith Efforts of the Federal Register. Where deemed appropriate and/or required, the concurrence of the Federal Highway Administration will be sought.

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

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

- D. Reports. The prime Contractor is required to submit to the Engineer a complete "Prime Contractor Statement of DBE Subcontractor Payments." There are two versions of this form, please refer to the project proposal to determine which version should be used. Form 2124 must be submitted on a bi-weekly basis. Form 0164 must be submitted quarterly. Sample copies of these forms are included in the section titled "Forms for Construction Contractors."

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

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

## Attachment B

### MICHIGAN DEPARTMENT OF TRANSPORTATION

#### Special Provision for Prompt Payment

##### Prompt Payment

The following is added to Section 109 of the Standard Specifications for Construction.

**109.10 Prompt Payment.** The prime Contractor agrees to pay each subcontractor for the work associated with their subcontract no later than ten (10) calendar days from the date the prime Contractor receives payment from the Department for said work. Release of payment from the Department for any work is confirmation that the Department has determined the work to have met the standards of satisfactory completion as defined below. If the prime Contractor has concerns about the satisfactory completion of subcontractor work items, this must be brought to the Engineers attention in advance of payment to the prime Contractor. This notice may give the prime Contractor the option to not release all subcontractor funds within the ten (10) calendar days specified. This requirement is also applicable to all sub-tier subcontractors and suppliers, and shall be made a part of all subcontracts and agreements.

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

- A. **Satisfactory Completion.** Progress and Partial payments for contract work are made based on this assessment; and satisfactory completion is defined for purposes of this prompt payment provision as:
1. Upon preliminary review, the Engineer finds the work completed in accordance with the contract, plans and specifications; and
  2. Required paperwork, for Progress and Partial payments, including material certifications, payrolls, etc., has been received and reviewed by the Engineer.

**The determination of whether work meets the standards of satisfactory completion is the responsibility of the Engineer and not the prime Contractor.**

B. **Less than full payment release.** Any delay or postponement of payment from this time frame, or partial payment to a subcontractor, may occur only upon receipt of written approval from the Engineer.

C. **Non-Payment Claims.** All notifications of failure to meet prompt payment

provisions shall be referred by the subcontractor to the prime Contractor and must be made in writing, with a copy to the project engineer. All notifications should be sent within thirty (30) calendar days of the date the payment was to be received. The prime Contractor must respond in writing to the subcontractor, with a copy to the project engineer and the Engineer of Construction and Technology, within seven (7) calendar days of receipt of the notification of failure to meet prompt payment provisions. Failure of the prime contractor to respond may result in sanctions. **The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.**

The Prime Contractor must include in all subcontract agreements a notice to subcontractors of their right to prompt payment, and of the Department's prohibiting Prime Contractors from holding retainage from subcontractors under 49 CFR 26.29.

The Prime Contractor must include in all subcontracts, language providing that the Prime Contractor and Subcontractor will use an approved alternative dispute resolution process to resolve prompt payment differences. The arbitration of the dispute will be handled through a member of the American Arbitration Association, 1 Town Square, Southfield, Michigan (248-352-5500), or another third party agreed to by both the prime Contractor and the Subcontractor. The parties must agree on a mediator or arbitrator within twenty five (25) calendar days after a written complaint has been sent by the subcontractor. The cost of mediation or arbitration will be borne by the parties as determined by the mediator. Qualified costs of mediation, for certified DBE's, will be paid by the Department based on current procedures. The DBE must contact the Office of Business Development for information on current procedures and to receive reimbursement. Outcomes of the alternative dispute resolution will be provided to the Engineer within 10 days of the decision.

Copies of all documents related to prompt payment claims will be provided to the Engineer by the prime Contractor for inclusion in the project files.

Failure of the prime Contractor to comply with prompt payment provisions may result in sanctions. Sanctions may include, but are not limited to: withholding of estimates on projects where prompt payment violations are confirmed; reduction of prequalification ratings; and/or withdrawal of bidding privileges.

## **Attachment C**

### **Mentor/Protégé DBE Development Program**

#### **Introduction**

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

#### **Purpose**

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

#### **Scope of Program**

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

#### **Eligibility**

1. The DBE firm must have been certified with MDOT for a minimum of one year during the preceding last five years. The firm must have engaged in MDOT contracts during this period.

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

### **Arrangements/Agreements**

1. MDOT recognizes that some mentors have the resources to train more than one protégé at 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 the protégé must submit to MDOT, within twenty (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 cost as follows:
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 can also provide advice on project management and, in particular, make the DBE aware of techniques which may improve productivity and competitiveness. Other areas where training may be of benefit are in plan interpretation, estimating and cost accounting methods. In each of these areas, however, the DBE contractor must retain the final decision-making responsibility.

#### B. Equipment Rental and Use of Personnel

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

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

#### C. Bonding

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

The mentor/protégé examples discussed here are not meant to be definitive. Other methods of encouraging and supporting the program may be allowable under the

regulations. Contractors or associations with proposed innovative ideas and programs should bring them to the attention of MDOT.

## **Special Concerns**

### **1. Exclusive Arrangements**

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

### **2. Brokering**

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

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

## **Guidelines for Development Plans**

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

1. The Development Plan should clearly set forth the objectives of the parties and their respective roles.
2. The Development Plan should be for two years or for the duration of a specified project or series of projects within the period.
3. The Development Plan should describe measurable benchmarks to be reached by the protégé (DBE) at successive stages of the plan.

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

## **Forms For Construction Contractors**

- MDOT Vendor Availability Questionnaire (MDOT Form 0168A)
- Disadvantaged Business Enterprise (DBE) Participation (MDOT Form 0178)
- Contractor Good Faith Effort Application (MDOT Form 0188)
- Prime Contractor Bi-Weekly Statement of DBE Subcontractor Payments (MDOT form 2124)
- Prime Contractor Statement of DBE Subcontractor Payments (MDOT Form 0164)
- Special Provision for Prompt Payment
- Application to Use Joint Checks (MDOT Form 0183)
- DBE Heavy Construction Trucking Credit Worksheet (MDOT Form 4101)
- MDOT DBE Trucking CUF Report (MDOT Form 4100)

## MDOT VENDOR AVAILABILITY QUESTIONNAIRE

Companies bidding on Michigan Department of Transportation (MDOT) prime contracts & bidding or quoting subcontracts (including contractors, truckers, material suppliers & service providers/consultants) should complete the following questionnaire.

If you have questions, or call 1-866-323-1264 or E-mail Jeanne Day-Labo at ([day-labo@michigan.gov](mailto:day-labo@michigan.gov)). Mail completed questionnaires to: Michigan Department of Transportation, Office of Business Services, P.O. Box 30050, Lansing, MI 48909, Fax: (517) 335-0945.

COMPANY NAME				TODAY'S DATE
ADDRESS				
CITY	STATE/PROVINCE	COUNTRY	ZIP CODE	AGE OF FIRM
COMPANY'S GROSS RECEIPTS FOR THE PAST YEAR FALL INTO THE FOLLOWING RANGE (Check one):				
Under \$500,000	\$500,001 - \$1 million		\$1 - \$2 million	
\$2 - \$5 million	\$5 - \$10 million		\$10 - \$20.41 million	
Over \$20.41 million				
COMPANY STATUS (Check all that apply):				
Construction Prequalified	Heavy Construction Trucking		Other services	
Materials Supplier	Other Trucking (i.e., freight, small packages, etc.)		Service/Consultant Prequalified	
Bus/Transit Agency Vendor	Construction - specialized items (no prequalification required)		MDOT-certified as a Disadvantaged Business Enterprise (DBE)	
			Airports Vendor	

Your cooperation in completing and submitting this form will help MDOT comply with federal regulations at 49CFR §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 form should be submitted annually.

To protect your privacy, information you provide is restricted to authorized MDOT employees only.

**When completing the questionnaire, the following may be helpful:**

**Company name:** (Enter the business name of your sole proprietorship, partnership, or corporation)

**Company street address:** (If your company has more than one office, enter the street address for the main office)

**City:** (Enter the name of the city where your main office is located)

**State/Province:** (Enter the state or province where your main office is located)

**Country:** (Select the country name from the drop-down menu box, if your company is located in Canada)

**Age of firm:** (Enter the number of years this sole proprietorship, partnership or corporation has been in business. If, for example, your company was a sole proprietorship, then incorporated, enter only the number of years your company has been a corporation.)

COMPANY'S GROSS RECEIPTS FOR THE PAST YEAR FALL INTO THE FOLLOWING RANGE (Check one):

Under \$500,000	\$500,001 - \$1 million	\$1 - \$2 million
\$2 - \$5 million	\$5 - \$10 million	\$10 - \$20.41 million
Over \$20.41 million		

COMPANY STATUS (Check all that apply): (Construction and/or Service Prequalification and/or DBE certification applies to MDOT prequalified and/or DBE certified firms only.)

Construction Prequalified	Service/Consultant Prequalified
Materials Supplier	MDOT-certified as a Disadvantaged Business Enterprise (DBE)
Bus/Transit Agency Vendor	Airports Vendor



**CONTRACTOR GOOD FAITH EFFORT APPLICATION**

This application is for consideration of a waiver or modification of the DBE contract goal. All supporting documentation and evidence of good faith efforts must be clearly labeled and submitted with this application, as specified below. Without such information, the application will be deemed incomplete and returned without review. The Department reserves the right to discuss the contents of the application with the applicant.

**PART A – APPLICANT INFORMATION**

APPLICANT NAME				
ADDRESS	STREET	CITY	STATE	ZIP CODE
PHONE NO.	FAX NO.		EMAIL ADDRESS	
CONTACT PERSON			TITLE	

**PART B – PROJECT DESCRIPTION**

LETTING DATE		LETTING ITEM NO.
CONTRACT ID	JOB NO. & FEDERAL ID	<input type="checkbox"/> Attach copy of the MDOT Advertisement or eProposal home page for this item.
ANTICIPATED START DATE (based on Progress Schedule)		EXPECTED COMPLETION DATE (based on Progress Schedule)

**PART C – WAIVER OR MODIFICATION REQUEST INFORMATION**

DESIGNATED DBE GOAL	REQUESTED DBE GOAL	Type of Request – Check one only <input type="checkbox"/> Pre-award <input type="checkbox"/> Post-award
%	VS %	
DESIGNATED DBE PARTICIPATION DOLLARS BASED ON ADVERTISED DBE GOAL (Total prime Bid \$ * DBE % Goal)		

**PART D – PROJECT SUMMARY AMOUNTS**

TOTAL PRIME BID	\$
TOTAL DOLLARS COMMITTED TO NON-DBEs (From line 16 below under Non-DBE commitment)	\$
TOTAL DOLLARS COMMITTED TO DBEs (From line 11 below under DBE commitment)	\$
TOTAL DOLLARS NOT COUNTED COMMITTED TO DBE SUPPLIERS (Total paid to DBE suppliers – 60%)	\$
WORK TO BE PERFORMED BY PRIME (Prime Bid – Non-DBE Dollars – DBE Dollars)	\$
PERCENT OF WORK PERFORMED BY PRIME	%
TOTAL DBE PARTICIPATION REMAINING	\$

**PART E – DBEs COMMITMENTS**

COMMITTED DOLLARS	DBEs COMMITMENTS (List only DBEs who have executed DBE participation forms. Attach MDOT Form 0178 copies)	TYPE OF WORK QUOTED	STATUS	DATE SUBCONTRACT OR P.O. EXECUTED
1.			DBE	
2.			DBE	
3.			DBE	
4.			DBE	
5.			DBE	

## PRIME CONTRACTOR BI-WEEKLY STATEMENT OF DBE SUBCONTRACTOR PAYMENTS

*Information required in accordance with 49 CFR part 26.37 (as detailed in the prompt payment provisions to monitor the progress of the prime contractor in meeting contractual DBE obligations).*

**SEE INSTRUCTIONS ON REVERSE**

PRIME CONTRACTOR	CONTROL SECTION	JOB NUMBER
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BI-WEEKLY PERIOD ENDING:	PROJECT COMPLETION
	FINAL ESTIMATE

CERTIFIED DBE SUBCONTRACTOR	SERVICES/WORK CLASSIFICATION	TOTAL CONTRACT AMOUNT	CUMULATIVE DOLLAR VALUE OF SERVICES COMPLETED	DEDUCTIONS	ACTUAL AMOUNT PAID TO DATE	DBE AUTHORIZED SIGNATURE	DATE

*As the authorized representative of the above prime contractor, I state that to the best of my knowledge, this information is true and accurate.*

CONTRACTOR AUTHORIZED REPRESENTATIVE (Signature)	TITLE	DATE
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**FOR THE MICHIGAN DEPARTMENT OF TRANSPORTATION USE ONLY**

COMMENTS:

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RESIDENT/PROJECT ENGINEER (Signature)	DATE
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## PRIME CONTRACTOR STATEMENT OF DBE SUBCONTRACTOR PAYMENTS

*Information required in accordance with 49 CFR part 26.37 (as detailed in the prompt payment provisions) to monitor the progress of the prime contractor in meeting contractual DBE obligations.*

SEE INSTRUCTIONS ON REVERSE

PRIME CONTRACTOR	LETTING DATE	LETTING ITEM #	CONTRACT ID
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PERIOD COVERED:     1st Quarter (October 1 - December 31, 20\_\_\_\_)     3rd Quarter (April 1 - June 30, 20\_\_\_\_)     PROJECT COMPLETION  
 2nd Quarter (January 1 - March 31, 20\_\_\_\_)     4th Quarter (July 1 - September 30, 20\_\_\_\_)     FINAL ESTIMATE

CERTIFIED DBE SUBCONTRACTOR	SERVICES/WORK CLASSIFICATION	TOTAL CONTRACT AMOUNT	CUMULATIVE DOLLAR VALUE OF SERVICES COMPLETED	DEDUCTIONS	ACTUAL AMOUNT PAID TO DATE	DBE AUTHORIZED SIGNATURE	DATE

As the authorized representative of the above prime contractor, I state that, to the best of my knowledge, this information is true and accurate.

CONTRACTOR'S AUTHORIZED REPRESENTATIVE (Signature)	TITLE	DATE
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FOR MICHIGAN DEPARTMENT OF TRANSPORTATION USE ONLY

COMMENTS:

RESIDENT/PROJECT ENGINEER (Signature)	DATE
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## APPLICATION TO USE JOINT CHECKS

Return to MDOT's Office of Business Development two weeks prior to joint check transactions. MDOT Office of Business Development, P.O. Box 30050, Lansing, MI 48909, FAX (517) 335-0945 Email: [MDOT-DBE@michigan.gov](mailto:MDOT-DBE@michigan.gov).

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. Typically, the prime contractor/payor issues a check as payor to the subcontractor and the materials supplier jointly to guarantee payment to the supplier for the materials/supplies used by the subcontractor. The use of joint checks in payment of materials/supplies is acceptable when the following conditions are met:

1. The joint check arrangement must be approved by the Michigan Department of Transportation;
2. The second party/payor (typically the prime contractor) acts solely as a guarantor;
3. The subcontractor must release the check to the supplier;
4. Use of joint checks is a commonly recognized business practice in the industry;
5. Copies of cancelled checks must be available for review by MDOT upon request.

CONTRACT ID	CONTRACT LOCATION
PAYOR Prime                      Subcontractor	TELEPHONE
FAX	EMAIL
SUBCONTRACTOR DBE                          Non-DBE	TELEPHONE
FAX	EMAIL

PLEASE STATE THE REASON FOR USING JOINT CHECKS

MATERIALS SUPPLIER NAME	DESCRIBE MATERIAL(S) AND QUANTITIES TO BE SUPPLIED	
ADDRESS		
CITY	STATE	ZIP CODE
MATERIALS SUPPLIER NAME	DESCRIBE MATERIAL(S) AND QUANTITIES TO BE SUPPLIED	
ADDRESS		
CITY	STATE	ZIP CODE
MATERIALS SUPPLIER NAME	DESCRIBE MATERIAL(S) AND QUANTITIES TO BE SUPPLIED	
ADDRESS		
CITY	STATE	ZIP CODE

*(Attach additional pages as needed for materials suppliers)*

By signing this application, we certify that information provided is true and accurate

SUBCONTRACTOR AUTHORIZED SIGNATURE	TITLE	DATE
PRIME CONTRACTOR AUTHORIZED SIGNATURE	TITLE	DATE
MDOT AUTHORIZED SIGNATURE		DATE



## MDOT DBE TRUCKING CUF REPORT

PROJECT NO.	REGION NAME
DBE NAME	PRIME NAME
NAME OF CONTRACTOR/COMPANY YOU ARE HAULING FOR IF NOT THE PRIME	

**1. PRIMARY BUSINESS FUNCTION**

Primary business function is hauling of construction materials and the firm owns at least one dump type truck, employs one full-time operator, is licensed and insured.

Primary business is not hauling; however, firm owns at least one dump type truck or the firm has entered into a long term lease agreement for a dump type truck, employs one full-time operator, is licensed and insured.

**2. CONTRACTUAL RESPONSIBILITIES**

a. Total number of trucks required to execute this contract?	
b. Of the total number of trucks, how many are owned and operated by your DBE firm?	
c. Of the total number of trucks, how many are leased and operated by your DBE drivers?	
d. Of the total number of trucks, how many are owned and operated by other certified DBE firms?	
e. How many trucks is your company leasing from Non-DBE's on this project?	
f. How many truck drivers is your company hiring from other contractors on this project?	
g. Check the box below, How are the hired trucks paid: <input type="checkbox"/> Directly by the DBE firm <input type="checkbox"/> Directly by the prime <input type="checkbox"/> Joint check Other, explain: _____	

3. WHEN DID YOU BEGIN HAULING ON THIS JOB?	6. HOW MUCH TIME (DAYS/WEEKS) HAVE YOU WORKED ON THIS JOB?
4. WHEN WILL THE JOB BE COMPLETED?	7. HOW MUCH WAS PAID TO DATE TO DBE's?
5. HOW MUCH WAS PAID TO DATE TO NON-DBE's?	

**By signing this form, I am stating that all information contained in this form is factual and true:**

PRINTED NAME/TITLE OF DBE REPRESENTATIVE	DATE
SIGNATURE OF DBE REPRESENTATIVE	DATE
SIGNATURE OF MDOT REPRESENTATIVE/TITLE	DATE

**PLEASE RETURN TO:**

**LANSING**  
 MDOT Office of Business Development  
 P. O. Box 30050  
 Lansing, Michigan 48909  
 Questions about this form? call Toll-free, 1-866-DBE-1264

**METRO REGION**  
 MDOT Office of Business Development  
 25000 Greenfield, Suite 245  
 Oak Park, Michigan 48237  
 Questions about this form? call Toll-free, 1-866-DBE-4009