

# **MDOT SMALL BUSINESS LIAISON SECTION**

## **HANDBOOK The Disadvantaged Business Enterprise (DBE) Program**

### **Federal Requirements Regarding:**

- **Commercially Useful Function**
- **Good Faith Efforts**
- **Contract Waivers/Modifications**

Revised 2/2/05

---



# TABLE OF CONTENTS

|  |     |
|--|-----|
| Overview.....  | 3   |
| Small Business Liaison Section Contact List.....                               | 5   |
| Prime Contractor/DBE<br>Commercially Useful Function (CUF) Responsibility..... | 7   |
| Commercially Useful Function Reviews and Outcomes.....                         | 11  |
| Good Faith Efforts Required by Prime Contractors .....                         | 13  |
| Procedures for Requesting Contract Waivers and Modifications .....             | 15  |
| Appendix A – Contract Waiver Modification Packet.....                          | A-1 |
| Appendix B – Commercially Useful Function Brochure .....                       | B-1 |
| Appendix C – DBE Program Region Contacts.....                                  | C-1 |
| Appendix D – DBE/Prime Contractor Complaint Form .....                         | D-1 |



## **OVERVIEW**

This handbook is designed to provide useful information to prime contractors, certified Disadvantaged Business Enterprises (DBEs), Michigan Departmental of Transportation (MDOT) staff and others.

This handbook provides up-to-date information regarding:

- DBEs performing a commercially useful function when working on MDOT contracts
- Prime contractor requirements to demonstrate a good faith efforts when using DBEs as subcontractors
- Forms and procedures prime contractors must use when requesting a contract waiver or modification.

Other forms designed to help with program implementation are also included.

Direct all inquiries about this handbook to the Small Business Liaison Section (SBLS). SBLS Administers MDOT's DBE Program.

Office: 517-373-2377  
Toll Free: 517-866-323-1264

### **Role of the Small Business Liaison Section, (SBLS)**

The role of the SBLS is to assist DBE's and Prime Contractors to the fullest extent possible. For issues related to Commercially Useful Function (CUF), Good Faith Efforts (GFE) and contract waivers and modifications as well as other information in this document, call us at our toll free number: 1-866-323-1264.





**Lansing Mailing Address:**

Business & Administrative Services Division  
 Small Business Liaison Section  
 P.O. Box 30050  
 425 West Ottawa – 3<sup>rd</sup> Floor  
 Lansing, Michigan 48909  
 Fax: (517) 335-0945  
 Toll Free: 1-866-DBE-1264

**Metro Mailing Address:**

Small Business Liaison Section  
 Crown Pointe Building  
 25900 Greenfield, Suite 245  
 Oak Park, Michigan 48237  
 Fax: (248) 967-0598

|                     |  |                |                       |
|---------------------|--|----------------|-----------------------|
| Patricia A. Collins | Administrator, Business & Administrative Services Division | (517) 373-2377 | collinsp@michigan.gov |
|---------------------|--|----------------|-----------------------|

**Field Services Lansing Office – Serving Bay, Grand North, Southwest & Superior Regions**

|                  |                            |                |                          |
|------------------|----------------------------|----------------|--------------------------|
| Lisa S. Thompson | Manager                    | (517) 373-0790 | thompsonl@michigan.gov   |
| Tonya Doyle-Bicy | Compliance Investigator    | (517) 241-4424 | doyle-bicyt@michigan.gov |
| Sue Espinoza     | On-the-Job Trainee Analyst | (517) 241-4421 | espinozas@michigan.gov   |
| Mary Gibbs       | Compliance Investigator    | (517) 373-3282 | gibbsm@michigan.gov      |
| Michael Ogbonna  | Compliance Investigator    | (517) 373-3284 | ogbonnam@michigan.gov    |

**Field Services Metro Office – Serving Metro & University Regions**

|                    |                                       |                        |                           |
|--------------------|---------------------------------------|------------------------|---------------------------|
| Frank Adams        | Manager                               | (248) 967-0570 Ext. 12 | adamsf@michigan.gov       |
| Vanessa Bridges    | Title VI Technician                   | (248) 967-0570 Ext. 15 | bridgesv@michigan.gov     |
| Lorezze Cloveer    | Compliance Investigator               | (248) 967-0570 Ext. 14 | cloverl@michigan.gov      |
| Ermena Constantine | Administrative Support                | (248) 967-0570 Ext. 10 | constantinee@michigan.gov |
| Anita Costanzo     | On-the-Job Trainee<br>Program Advisor | (248) 967-0570 Ext. 21 | costanzoa@michigan.gov    |
| Verna Miller       | Title VI Specialist                   | (248) 967-0570 Ext. 17 | millerve@michigan.gov     |

**Records, Reports & Analysis**

|                                 |   |   |   |
|---------------------------------|---|---|---|
| Patricia A. Collins             | Acting Manager  | (517) 373-2377                              | collinsp@michigan.gov                             |
| Ebony Alexander & Nick Sundberg | Education/Training,<br>Association Membership<br>Subscription Services<br>Consultant Services<br>Programs/EPAC Online | (517) 241-4671<br>(517) 241-4806            | alexandere@michigan.gov<br>sundbergn@michigan.gov |
| Jeanne Day-La Bo                | Field Manager; Bid Express;<br>Vendor Availability; DBE<br>Goals; DBE Achievements                                    | (517) 335-6537                              | day-laboj@michigan.gov                            |
| Ann Williams                    | Outreach Specialist   | (248) 967-0570 Ext. 11<br>or (517) 241-4666 | williamsa3@michigan.gov                           |
| Gerry Gould                     | Good Faith Effort requests  | (517) 373-0790                              | gouldg@michigan.gov                               |
| Doris Wilson                    | DBE Outreach Specialist   | (517) 373-7460                              | wilsondor@michigan.gov                            |
| Samir El-Ahmad                  | On-the-Job Trainee<br>Program Manager   | (517) 373-0345                              | el-ahmads@michigan.gov                            |

MDOT web site: <http://www.michigan.gov/mdot>  
 MDOT Construction Prequalification & Awards: Phone: (517) 335-4281 Fax: (517) 373-3707  
 MDOT Service Prequalification: Phone: (517) 373-6402 Fax: (517) 241-4193  
 Field Manager: <http://www.fieldmanager.com> Phone: (352) 381-4400 Fax: (352) 381-4444  
 Bid Express: <http://www.bidx.com> Phone: (352) 381-4888 Fax: (352) 381-4444  
 DBE Technicians (construction project issues): [http://www.michigan.gov/documents/dbecontacts\\_57188\\_7.pdf](http://www.michigan.gov/documents/dbecontacts_57188_7.pdf)



## **Prime Contractor/DBE Commercially Useful Function (CUF) Responsibility**

DBEs are required to perform a commercially useful function (CUF) on US DOT assisted contracts. CUF requirements are included in the Code of Federal Regulations (CFR), 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 the work according to normal industry practices, except where such practices violate DBE regulations outlined in 49 CFR Part 26.

**49 CFR § 26.53 provides that 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 by MDOT.** When a DBE subcontractor fails to complete the work on a 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 these requirements.

Detail regarding performance of a CUF is provided below:

**DBEs Management** - Management includes scheduling work operations, ordering and paying for equipment and materials necessary to fulfill 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 the 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.

**DBEs 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.
3. On a limited basis, when the contract requires specialized knowledge, a DBE may be allowed to augment his or her workforce with personnel who normally work for another firm. In each case, the DBE shall request in writing, and secure the department's approval of the arrangement prior to commencing the work of the contract.

Prior to allowing any arrangement, the department shall ensure that:

1. The arrangement is not designed to provide the DBE with basic labor requirements of the contract.
2. The arrangement is on a limited basis and not long-term, repetitive, or continuing. Long-term, repetitive, or continual use by a DBE firm of personnel primarily employed by a non-disadvantaged firm will be construed as an attempt to artificially inflate DBE participation and will not be allowed.
3. Exclusive of the arrangement, the majority of the DBE's work force and his or her superintendent(s), and/or foremen must be regular employees of the DBE.
4. The arrangement should be indicative of normal industry practices and should not represent a significantly greater portion of the contract work than would be expected on the basis of normal industry practices.

5. Supervision of contract work by personnel normally employed by another contractor, personnel not under the control of the DBE, or personnel belonging to another contractor, constitutes failure to perform a CUF.

**DBEs 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.

**DBEs 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.
3. Count expenditures with DBEs for materials or supplies toward DBE goals are counted as follows:
  - a. DBE manufactures: Count 100 percent of the cost of the materials or supplies toward DBE goals.

- b. DBE regular dealers: Count 60 percent of the cost of the materials or supplies toward DBE goals. Additionally, costs of delivering materials or supplies to the job site are incidental to the cost of the materials or supply. When delivery charges are calculated separately, count 60 percent of the delivery cost toward DBE goals.
- c. DBE brokers: 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 fees are 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.

### **DBE Regular Dealers**

A regular dealer must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the supplies or products in question. Additionally, a regular dealer typically owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A firm that supplies a product on an ad hoc basis to a few contractors with whom it has a special relationship, rather than to the general public as a whole, is not a regular dealer.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

**DBEs Trucking Operations** - The DBE must be responsible for the management and supervision of the entire trucking operation under their contract with the prime. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

1. DBE trucking firms must own at least one fully licensed, insured and operational truck that is used on a day-to-day basis on each contract the DBE trucking firm undertakes. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates and using drivers it employs.

2. 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. All lease agreements must be submitted to MDOT for review.
3. The DBE may also lease trucks from a non-DBE firm, including an owner-operator.
  - a. The DBE who leases trucks from a non-DBE is entitled to credit toward DBE participation goals only for the fee or commission it receives as a result of the lease arrangement.
  - b. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
4. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not prevent 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 trucks.
5. All leased trucks must display the name and identification number of the DBE.

## **DBE FIRMS**

### **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). Failure to attend a conference may result in the firm's eligibility to participate in the DBE program being removed 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. DBE 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 the firm's eligibility to participate as a DBE.

### **PRIME CONTRACTORS**

Prime contractors are responsible for ensuring their DBE subcontractors are providing a commercially useful function. 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. Determination of a deficiency in meeting the required DBE participation percentage on the contract. This may result in the Federal Highway Administration, (FHWA), the Federal Aviation Administration, (FAA) or the Federal Transit Administration, (FTA), notifying the department that it has overstated the reported DBE participation for this project.
2. Notification of the prime contractor's DBE participation deficiency on the project to the department's prequalification committee.
3. A wide variety of sanctions, ranging from a written notice of violation, up to and including loss of bidding privileges or criminal charges.

## Good Faith Efforts Required by Prime Contractors

When MDOT establishes a DBE contract goal, the department must award the contract only to a bidder who makes good faith efforts to meet the DBE contract goal. MDOT will determine that a bidder has made good faith efforts if the bidder:

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

Following is a list of actions which will be considered as part of the bidder's good faith efforts to obtain DBE participation. This list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or efforts may be relevant in appropriate cases. **For example, previous efforts by a prime contractor to meet or exceed a contract DBE percentage can be considered.**

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of 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.  
  
(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. **However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime**

**contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts.** Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBE's as unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the department.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services as long as these efforts do not violate any commercially useful function (CUF) guidelines.
- H. Effectively using the services of available minority/women contractors' groups; local state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**Note: Efforts such as sending blanket faxes or e-mail messages to all DBE firms is not considered a good faith effort. Also, contacting plan holders only is not considered a good faith effort.**

In determining whether a bidder has made good faith efforts, MDOT may take into account the performance of other bidders in meeting the contract DBE percentage. For example, when the apparent successful bidder fails to meet the contract DBE percentage, but others meet it, the department may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, the department may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

## Procedures for Requesting Contract Waivers and Modifications

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 and contractual requirements. The names of the DBEs and the description of work to be performed by each will be submitted by the determined lowest qualified bidder to the Contract Services Division of the Department within fourteen (14) calendar days after the furnishing of the contract and bond forms by the bidder. This information must be submitted on the form provided by the Department (form 0178) and signed by an authorized signer for each certified and/or pre-qualified 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. This must be done on the forms and in the format required by the Department.

**Pre-Award Waivers or Modifications.** If the apparent low bidder submits a request for waiver or modification of the DBE participation goal the contract will not be awarded until a determination on the request is made by the Department. The bidder must submit evidence of good faith efforts to meet the DBE participation goal. Requests for modification or waiver of DBE participations and all required documentation offered by the prime in support of the request, must be submitted to the department within 14 calendar days after the furnishing of the contract and bond forms. 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 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.

**Post-Award Waivers or Modifications.** The Code of Federal Regulations (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, **MDOT must be notified immediately of a DBE's inability to perform any or all of its work and the contractor's intent to obtain a substitute DBE.** Contractors are required to make a good faith effort to replace a DBE that is unable to perform with another DBE. The substitute DBE must be approved by the Department prior to starting work.

The contractor may, after award, request a waiver or modification of the DBE participation goal. However, 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. The prime contractor may be subject to sanctions for failure to comply with post award waiver/modification requirements.

Requests for waiver or modification of the goal for DBE participation must be submitted to the DBE Program Administrator. Form 0169 and other forms in appendix C (Contract Waiver Modification Packet) are to be completed and submitted. The Department's Good Faith Efforts Committee 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. Good Faith Efforts Committee Guidelines will be followed. Where deemed appropriate and/or required, the concurrence of the U.S. Federal Highway Administration will be sought.

**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 Efforts Committee 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 are administratively final.

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

The prime contractor is required to submit to the Project Engineer a complete "Prime Contractor Statement of DBE Subcontractor Payments", (form 0164), as required by MDOT.

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

**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."

**Note:** Pre- and post-award waiver or modification requirements are also detailed in Section 102.18 of MDOT's 2003 Standard Specifications for Construction, "Subletting work to Disadvantaged Business Enterprises."

**Appendix A**

**Contract  
Waiver/Modification  
Packet**



## **Good Faith Efforts**

### **Contract Waiver/Modification Packet**

The attached forms are to be submitted to MDOT with the prime contractor's written request for a contract waiver/modification. These forms must be submitted before MDOT's Good Faith Efforts Committee will consider a waiver/modification request. Requests for modification or waiver of DBE participation goals by a Bidder and all required documentation offered by the prime in support of the request must be submitted to the department within 14 calendar days after the furnishing of the contract and bond forms, by the department, to the Bidder.



## **Notice to Bidders of Construction Contracts with a DBE Participation Percentage**

This information is provided to assist bidders of MDOT construction projects. When an MDOT contract, with a Disadvantaged Business Enterprise (DBE) percentage, is placed for bids MDOT will provide the following to all bidders:

- 1.) Waiver/Modification Request Checklist
- 2.) Form 0178 "Disadvantaged Business Enterprise" (DBE) Participation, (Page 1 & 2)
- 3.) Instructions for accessing MDOT's Electronic DBE/Prequalification Directory (The Michigan Unified Certification (MUC) Directory)
- 4.) Instructions for using E-PAC Online and general information.
- 5.) Failure to submit a bid letter



## Prime Contractor Modification/Waiver Request Checklist

**The following must be received at least 25 days prior to the Contract Award date.**

Please do not submit waiver/modification request until all items listed are attached or a letter explaining why an item is not attached is provided.

| Check<br>Items<br>Submitted | Documentation that must accompany each modification/waiver request. This information must be submitted in order to determine your good faith efforts.   |
|-----------------------------|---|
|                             | A list of work items from the proposal. Indicate the items your company plans to perform.   |
|                             | A separate list of work items to be subcontracted out.  |
|                             | A completed/Signed Form 0169, "Contractor Good Faith Effort Application".   |
|                             | A copy of page 1 & 2 of Form 0178 (formerly known as the Blue Sheet). A copy of page 2 must be completely filled out and submitted for each DBE.  |
|                             | A brief letter addressed to the Good Faith Efforts Committee (GFEC) stating why this request is necessary. Include details outlining the process you utilized to solicit DBEs. Include a copy of the form "Certification of Unsuccessful Attempts to Obtain a Bid from a DBE firm", for each DBE that was solicited but did not submit a bid. |
|                             | A list of all DBEs contacted, verification of letters, fax transmissions or e-mails sent to DBE's, which clearly identify each DBE firm contacted. Include the fax number and/or email address for each DBE firm solicited. Please include a copy of responses received from DBEs.  |
|                             | Copies of advertisements (media, webpage, etc.) published to solicit DBEs.  |

**Submit your complete package to:**

Michigan Department of Transportation  
 DBE Program Administrator  
 Small Business Liaison Section  
 425 W. Ottawa  
 Lansing, Michigan 48909  
 (517) 373-2377  
 Fax: (517) 373-0167

*\*Note: MDOT DBE Program staff will follow up with all non-responsible DBE's by sending the letter shown in Appendix D.*



## DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION

Information to be submitted within 14 days to the Michigan Department of Transportation (MDOT) Contracts Services Division by the prime contractor concerning DBE firms to be used on the above project.

1. Prime contract dollar value: \$
2. Proposed DBE dollar and percentage participation vs. the Department's participation goal

|                      |
|----------------------|
| LETTING DATE         |
| LETTING ITEM NO.     |
| CONTRACT ID          |
| PRIME CONTRACTOR     |
| PRIME E-MAIL ADDRESS |
| PRIME PHONE          |
| PRIME CONTACT PERSON |

|   |   |
|---|---|
| DEPARTMENT'S PARTICIPATION GOAL<br>% = \$ | CONTRACTOR PROPOSED PARTICIPATION<br>% = \$ |
|---|---|

**NOTE:** Each company listed on the following pages must have current DBE certification on file with the Department. These pages must be signed by both the DBE and prime contractor and returned to the Contracts Services Division as a package. **Current DBE Directories are maintained on MDOT's Web site: <http://www.michigan.gov/mdot>. Select the "Doing Business" link on the left of the screen, and then select the "Disadvantaged Business Enterprise" service area.**

If prequalification is required, credit may be given only for firms who are both prequalified and DBE certified in the applicable work type(s). Supply purchase orders and trucking agreements may count DBE participation credit as follows: Manufacturer = 100%; Regular Dealer = 60%; Supply Broker = Fee; Trucker = 100%; Truck Broker = Fee.

Subcontracts and/or purchase orders must be submitted to the Project Engineer before each DBE begins its project work. Should a DBE be unable to fulfill its commitment, the prime contractor must comply with contractual "Requirements for DBE/WBE" and section 102.18 of MDOT's "Standard Specifications for Construction."

List the DBEs for this project. Include their MDOT Vendor Number and the dollar value of the proposed subcontract or purchase order. Detailed information shall be provided on the following pages, which are to be signed by an authorized agent for each DBE and the prime contractor:

|          |                    |              |
|----------|--------------------|--------------|
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |
| DBE NAME | MDOT VENDOR NUMBER | DOLLARAMOUNT |

Federal regulations at 49 CFR ' 26.53 provide that work committed to DBEs may not be performed by others without prior consent by the Department. Failure to utilize DBEs named on these participation sheets without prior approval as outlined in 49 CFR ' 26.55 may result in sanctions.

|                  |
|------------------|
| LETTING DATE     |
| LETTING ITEM NO. |
| CONTRACT ID      |
| PRIME CONTRACTOR |

Check one of the following boxes to describe the primary type of work or service this DBE will provide:

Subcontractor  
Trucker

Trucker Broker  
Supply – Regular Dealer

Supply – Manufacturer  
Supply - Broker

DBE Trucking firms must provide the following information:

Maximum number of Tri-Axles to be provided: \_\_\_\_\_ Hourly rate for Tri-Axles: \_\_\_\_\_

Maximum number of Semis to be provided: \_\_\_\_\_ Hourly rate for Semis: \_\_\_\_\_

Maximum number of Trains to be provided: \_\_\_\_\_ Hourly rate for Trains: \_\_\_\_\_

DBE Suppliers must list supplies/materials to be provided, including cost to be charged for each supply/material. (Attached a separate sheet if necessary). This cost must include the delivery charge for regular dealers. The total cost (material plus delivery) is then multiplied by 60% for regular dealers.

CONTACT PERSON NAME

FIRM NAME

ADDRESS

CITY

STATE

ZIP

PHONE NUMBER

E-MAIL ADDRESS

FULLY DESCRIBE THE TYPE OF WORK, SUPPLY, OR SERVICE THIS DBE WILL PROVIDE

DOLLAR AMOUNT OF SUBCONTRACT OR PURCHASE ORDER

IF THIS FIRM IS ACTING AS A REGULAR DEALER, 60% OF THE  
SUBCONTRACT OR PURCHASE ORDER VALUE

### ACKNOWLEDGED BY

By signing this commitment, we certify that the DBE firm is MDOT-certified as a DBE, and, if prequalification is required, prequalified in the types of work to be performed.

DBE AUTHORIZED SIGNATURE

TITLE

DATE

PRIME CONTRACTOR AUTHORIZED SIGNATURE

TITLE

DATE

# THE MICHIGAN UNIFORM CERTIFICATION PROCESS (MUCP)

The Michigan Uniform Certification Program (MUCP) website contains searchable directory of all certified DBEs in Michigan. The MUCP website can be accessed by entering the following address:

<http://www.michigan.gov/mdotdbe>

Under “Directories,” choose the link for the New Searchable MUCP DBE Directory. You may download and later print the entire directory of certified DBEs by clicking the link titles “Download DBE Directory,” which is located on the lower right of the screen.

## MUCP Helpful Hints

If you are looking for a certified company on the MUCP-DBE database, here are some hints that you may find helpful:

- Make sure the company name is spelled correctly
- Some companies may have hyphenated names or other various formatting concerns; for these companies, try to use only part of the name. For example, if the company you are looking for is “ Aperson Enterprises”, try typing in “son.” All businesses containing “son” in their name will appear.
- If the company you are trying to search for has an “&” symbol in its name, make sure to spell out the word “and” while searching. For example, if you are looking for “Y & Z Industries, “ type in “Y and Z”.
- The database will bring up the entire list of certified Disadvantaged Businesses by simply typing in the first letter. This may be the easiest way to search when unsure of the spelling of the full name of the business.

## Work Location County

You can search by work location county in the same fashion. Simply select the county from the pull down arrow box and then click “search.” It will bring up all of the firms that work in that specific county.

These two searches can be done together for all business types working in a specific county.

## How to download search results

Once you have the entire list of companies of a specific type and or category you can hit “download search results” in the upper right hand corner. This will allow you to either open the search results into Microsoft Word for easy printing, or you can save them so you can read them at a later time.

## How to do an advanced search

The search function of the MCUP database makes it possible to do a very detailed search based on a variety of information (e.g. type of business, county and prequalification status). You can do this by following these simple steps:

- ➔ Let’s say I want to search for a company that does trucking of sand in Clinton County. I can do an advanced search to accomplish this.
- ➔ On the MUCP homepage, use the pull down arrow to select “trucking” under the TYPE OF BUSINESS.

- ➔ Then use the pull down arrow under WORK LOCATION COUNTY to select “Clinton” and click “search.”
- ➔ Next, hit “CTRL-F” and type “sand” in the search box. Click “Find Next” and the search engine will jump to each entry that has the word “sand” in it. Continue to hit “find next” until you have seen all the entries.
- ➔ If looking for **MDOT prequalified** contractors put in the word “prequal” instead of sand in the above example. The MDOT prequalification classifications are shown in parenthesis in the work description for each contractor.

*For further assistance, please contact one of the organizations listed under “CONTACT MUCP” at the top of the MUCP homepage.*

## **LOCATING DBEs**

### **EPAC Online**

EPAC Online has nearly 15,000 members and is able to provide a number of electronic services to enhance business work opportunities. Membership in EPAC will provide businesses with the opportunity to: contract with other members; access non-MDOT contracting opportunities being let for bid throughout Michigan; have their business appear in an online directory, based on the services that they provide; receive instant messages when someone requests or submits quotes from their business – and many other opportunities.

EPAC is working with the Association of Underground Contractors (AUC) and Michigan Road Builders Association (MRBA) by providing an introductory enrollment price to prime contractors wishing to subscribe to the service. This service will allow prime contractors access to updated information on MDOT certified and/or prequalified DBEs and the ability to post requests for bids from DBEs (for prime contractors who are EPAC subscribers).

The services provided by EPAC can enhance the networking and contractual opportunities available to firms that choose to participate. For more information on EPAC Online, visit their web site at [www.epaconline.com](http://www.epaconline.com) or call 877-372-2669.

## **Notice To A Certified DBE For Failure To Submit A Bid**

**Project No.:**

You were contacted on the above project and encouraged to submit a bid. The DBE program is designed to increase contracting opportunities of certified DBEs. As a certified DBE you should take every opportunity to submit bid(s) on MDOT contracts especially when solicited by a prime contractor or informed of an opportunity by our staff. It is our understanding that you did not submit a bid on the above reference project. Please tell us identify what prevented you from participating in this bid process by completing the attached sheet and returning it to the small business liaison section DBE Program Administrator.

In order for MDOT to develop support programs or identify training that will assist certified firms, you must assist us. We need to know what prevented you from bidding on the above project. If you need assistance please let us know. DBE Region contacts are also available to assist you, (*see attached list*).

Please be aware that when a prime contractor does not receive a response from you that company may be reluctant to continue to solicit you for bids. In the future please let the soliciting contractor know by their deadline, if you will submit a bid. Your continued failure to respond to contractor request for bids may result in MDOT placing you on an inactive list. This may result in suspension of reimbursements, notices of contract opportunities, notices of meetings, notices of training sessions, etc.

Feel free to contact me at (517) 373-2377, or email me at: [collinsp@michigan.gov](mailto:collinsp@michigan.gov) at any time. You may also call me, toll free, at 1-866-323-1264, ext. 32377.

Patricia A. Collins, Administrator  
DBE Program Administrator  
Business & Administrative Services Division



## Information Regarding My

# FAILURE TO SUBMIT A BID

*Must be filled out by the DBE firm and given to the prime contractor  
Please print or write legible*

### Your Company Name:

|  |  |
|--|--|
| <b>I received a request to bid from:</b><br>(Contractor's name requesting bid)                                   | <b>Project No. &amp; County of Project:</b>  |
| <b>[ ] I did not submit a bid because:</b> (state reason you did not respond use additional sheets if necessary) |  |
| <b>I am certified in:</b><br><br><b>Check if not sure:</b> <input type="checkbox"/>                              | <b>I am pre-qualified:</b> [ ] Yes [ ] No<br>If yes, please list the categories.<br><br><b>Check if not sure:</b> <input type="checkbox"/> |
| <b>Authorized DBE's Signature</b> _____ <b>Date</b> _____  |  |
| <b>Phone:</b>  |  |
| <b>Fax:</b>  |  |
| <b>Email:</b>  |  |

*(Please write clearly)*

*Michigan Department of Transportation  
Small Business Liaison Section  
DBE Program Administrator  
425 W. Ottawa St., Lansing, MI 48909  
(517) 373-2377 fax: (517)373-0167  
Toll Free: 1-866-323-1264 ext.32377  
or email [williamsa3@michigan.gov](mailto:williamsa3@michigan.gov)*



## **Appendix B**

# **Commercially Useful Function Brochure**



# Purpose:

- • • • • Performance of a Commercially Useful Function (CUF) by Disadvantaged Business Enterprises (DBEs) is a legal and contractual requirement. Prime Contractors/Consultants are responsible for ensuring DBEs perform a CUF on their contracts. This brochure is intended to provide guidance in meeting regulatory requirements. For further information, contact the Michigan Department of Transportation, Business and Administrative Services, Small Business Liaison.
- • • • •

Questions or Comments can be addressed to:

**Mail:**

Michigan Department of Transportation  
Small Business Liaison  
P.O. Box 30050  
Lansing, MI 48909

**Telephone:**

1-866-DBE-1264

**Fax:**

(517) 335-0945



**Commercially  
Useful Function  
(CUF)**

**Pat Collins, DBE Program Administrator**  
1-866-323-1264 / 517-373-2377



Michigan Department of Transportation  
Providing the highest quality transportation services for economic benefit and improved quality of life.

Michigan's Department of Transportation is a leader in transportation services. MDOT's Department of Services, Business and Administrative Services.



**Q.** I have a project with DBE participation goals, and the DBEs have to do a "commercially useful function" (CUF). What does CUF mean?

**A.** In brief, CUF means:

- A DBE firm must be responsible for execution of a contract or a distinct element of the work by actually performing, managing, and supervising the work involved.
- The DBE must pay all costs associated with personnel, materials and equipment. No payments can be made through deductions by the Prime.
- A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation.
- The DBE firm works in accordance with normal industry practice, except where normal industry practices are in violation of DBE regulations outlined in 49 Code of Federal Regulations, Part 26.

**Q.** Who is responsible for ensuring DBEs perform a CUF?

**A.** The Prime Contractor, even when the DBE is working as a second-tier subcontractor.

**Q.** What happens if a DBE firm does not perform a CUF?

**A.** The DBE and the Prime can both be penalized. Penalties may be applied progressively, and are based on the severity of the CUF violation. MDOT is also held accountable by the U.S.D.O.T.



**Q.** What else must a DBE do to perform a CUF?

**A.** The DBE must be responsible for the performance and management of its work; for its workforce; and for equipment and materials used. DBEs must do all work which has been committed and/or subcontracted to them.

**Management:**

- Daily operations must be supervised either personally by the DBE owner, or by a full-time, skilled, and knowledgeable employee of the DBE firm who is under the DBE owner's direct supervision.
- Mere performance of administrative duties is not supervision of daily operations.

**Workforce:**

- Work must be done by workers employed, supervised, and paid directly by the DBE. The DBE is responsible for all payroll and labor compliance requirements.
- DBE firms cannot share employees with non-DBE contractors, particularly the prime contractor or an affiliate of the prime.

**Equipment:**

- A DBE must own or lease equipment used to do its work.
- Operation of equipment must be subject to the full control of the DBE.
- A DBE must have a lease agreement for any leased equipment, a long-term lease is preferred.
- A DBE may lease on an ad hoc basis from another contractor, excluding the prime or an affiliate of the prime, with MDOT approval.
- Equipment leased and used by the DBE firm with payment deducted from the prime contractor's payment(s) to the DBE is not allowed.

**Materials:**

- The DBE must be responsible for negotiating price, determining quality and quantity, and paying for and ordering its materials.
- Material payment through deduction from the prime contractor's payment(s) to the DBE is not allowed.

**Truckers:**

- Trucks owned or leased by DBE truckers must have Michigan Public Service Commission (MPSC) Authority and meet MPSC vehicle identification requirements.

**Related Information:**

- DBE participation toward project goals can not be counted until the DBE has been paid for its work.
- Prime Contractors must notify MDOT as soon as they learn a DBE is unable to perform its work. For further information about post award waivers of DBE participation, refer to the "2003 Standard Specifications for Construction", subsection 102.18.
- For detailed information about counting the value of work performed by DBEs toward project goals, please refer to "Requirements for DBE" in your contract, or refer to 49 CFR §26.55.

A link to the regulation is available on the Web at

<http://osdhuweb.dot.gov/business/dbe/index.html>. Those without Web access may request a copy

by calling our toll-free number, 1-866-DBE-1264 or 1-866-323-1264.



# Appendix C

**MICHIGAN DEPARTMENT OF TRANSPORTATION  
Bureau of Highways  
DBE Program Region Contacts**

*\*Note: These are contacts for assistance with program field issue.*



**MICHIGAN DEPARTMENT OF TRANSPORTATION**

Bureau of Highways  
DBE Program Region Contacts

---

Gain C. Taneja, Lansing Construction and Technology Staff Engineer  
P.O. Box 30049, Lansing, MI 48909  
Phone: (517) 322-6181 Fax: (517) 322-5664

Ali Wellington, DBE Staff Technician  
Lansing Construction & Technology  
P.O. Box 30049  
Lansing, MI 48909  
PH: (517) 322-5317  
Fax: (517) 322-5664  
Cell:(517) 202-3716

**Southwest Region**

Tom Hohm  
1501 E. Kilgore Rd.  
Kalamazoo, MI 49001  
PH: (616) 337-3974  
Fax: (616) 337-3751  
Pager: (616) 212-0111

**Superior Region**

John Bedard  
1818 Third Ave. North  
Escanaba, MI 49829  
PH: (906) 786-1800  
Fax: (906) 789-9775

**University Region**

Channing Page, DBE Contact  
1019 Trowbridge Rd.  
East Lansing, MI  
PH: (517) 324-2277  
Fax: (517) 324-9580  
Cell: (517) 204-5698

**North Region**

Jay Maufort  
2927 D & M Drive  
Gaylord, MI 49735  
PH: (989) 731-5090  
Fax: (989) 731-0536

**Metro Region**

Larry Douglas, DBE Contact  
18101 W. Nine Mile Rd.  
Southfield, MI 48075  
PH: (248) 483-5166  
Cell: (248) 830-4372  
Fax: (248) 569-3302  
Email: [douglasl@michigan.gov](mailto:douglasl@michigan.gov)  
Jurisdiction: Oakland, Macomb, St. Clair Co.

**Grand Region**

Jim Rybicki, DBE Contact  
1420 Front Ave., NW  
Grand Rapids, MI 49504  
PH: (616) 451-3091  
Fax: (616) 451-0707  
Cell: (616) 813-9179

Love Charles, DBE Contact  
Detroit TSC  
723 Rosa Park Blvd.  
Detroit, MI 48216  
PH: (313) 965-6350 ext. 408  
Fax: (313) 965-6340  
Pager: (248) 815-7471  
Home: (248) 373-1179  
Jurisdiction: Wayne Co., City of Detroit

**Bay Region**

Jorge Dacarett, DBE Contact  
9495 East Potter Rd.  
Davison, MI 48423  
PH: (810) 653-7470  
Fax: (810) 653-1248  
Cell: (989) 233-4264



## **Appendix D**

# **DBE/Prime Contractor Complaint Form**

**Note: This form can be completed and submitted by any firm with a DBE Program related complaint.**



## Disadvantaged Business Enterprise (DBE) – Complaint Form

This form can be used by a MDOT-certified DBE or prime contractor who seeks to bring a problem to the attention of the Small Business Liaison Section (SBLs). You must have reasonable evidence of a problem before making a complaint.

### How do We Reach You?

Name: \_\_\_\_\_  
Business Name: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

### Tell Us Your Complaint

#### Subject of Your Complaint:

DBE Participation Sheets  Project Payment-Related Issue   
Project Performance  Services Issue  Other

Name of Company and/or Individual You Are Complaining About: \_\_\_\_\_

Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Briefly explain the problem: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PLEASE INCLUDE COPIES OF ANY AND ALL WRITTEN DOCUMENTATION PERTAINING TO YOUR COMPLAINT.**

*Send this form to:*

*DBE Program Administrator  
Small Business Liaison Section  
425 W. Ottawa St., Lansing, MI 48909  
(517) 373-2377*