



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

RICK SNYDER
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

November 5, 2015

Dear Contractor:

Effective December 1, 2015, the Michigan Department of Transportation (MDOT) is implementing a new program to monitor Disadvantaged Business Enterprise (DBE) supply to MDOT projects. This program was developed in response to Federal Highway Administration (FHWA) concerns regarding the counting of a DBE credits, in addition to the performance of Commercially Useful Function (CUF) when DBE suppliers are used on MDOT projects. As a result of this change, MDOT will determine the appropriate DBE function and percentage of credit that can be awarded on a contract-by-contract basis. MDOT will no longer apply designated Manufacturer, Regular Dealer, or Broker MDOT work classification coding to DBE Suppliers. DBE firms that are DBE-certified in MDOT Supplier work codes will receive revised certification letters.

The following is the program's guidance from 49 CFR part 26 which states in part:

1(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

2(ii) For purposes of this section, a regular dealer is a firm that 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) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question...

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) 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.

The following is the program's guidance from 49 CFR 26.55 which states in part:

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

(1)(i) 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)(i) 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.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.

(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. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

Beginning December 1, 2015, MDOT will approve all DBE Participation forms (MDOT Form 0178, also commonly known as Blue Sheets) that request use of a DBE for credit in providing Supplies. The contractor **must** indicate in what capacity DBE credit is being contracted, i.e. Regular Dealer, Manufacturing or Brokering, as well as a detailed description of the work to be performed by the DBE. The applicable North American Industry Classification System (NAICS) code **must** be noted on the MDOT Form 0178 next to the DBE Supplier name before submitting the form to MDOT.

The following is a listing of commonly used Supplier NAICS codes:

326140	Polystyrene Foam Product Manufacturing
327310	Cement Manufacturing
327320	Ready-Mix Concrete Manufacturing
327331	Concrete Block and Brick Manufacturing
327332	Concrete Pipe Manufacturing
327390	Other Concrete Product Manufacturing
331210	Iron and Steel Pipe and Tube Manufacturing from Purchased Steel

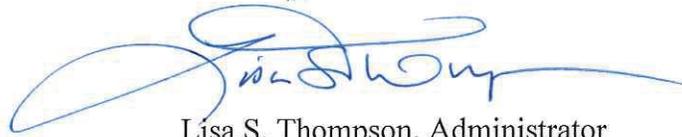
- 332312 Fabricated Structural Metal Manufacturing
- 423320 Brick, Stone, and Related Construction Material Merchant Wholesalers
- 423390 Other Construction Material Merchant Wholesalers
- 423490 Other Professional Equipment and Supplies Merchant Wholesalers
- 423510 Metal Service Centers and Other Metal Merchant Wholesalers
- 423610 Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
- 444220 Nursery, Garden Center, and Farm Supply Stores
- 486910 Pipeline Transportation of Refined Petroleum Products

The following is a listing of the revised MDOT Supplier work codes:

- TA Geotextile Fabrics
- TB Asphalt & Petroleum Products
- TD Construction Wood Products
- TE Construction Epoxy, Sealants & Other Coatings
- TF2 Concrete Additives & Treatments
- TF3 Concrete Brick, Block, Pipe & Other Structures
- TG Electrical Materials
- TH Fence
- TI Aggregates
- TJ Guard Rail & Related Products
- TM Landscaping Products, Nursery Stock, Seed & Sod, Mulch, and Erosion Control Products
- TP Paint, Tape & Other Construction Products
- TR Plastic & Foam Construction Products
- TS Road Signs, Markers & Barricades
- TW Steel Products

The MDOT work codes and NAICS coding for all MUCP Certified DBE firms is located on the Michigan Unified Certification Program website at www.michigan.gov/MUCP. Type in the company name and/or you may search for a specific type of work. Appropriate NAICS coding may also be searched by work type on the NAICS website at www.census.gov/eos/www/naics/. If you have any additional questions concerning this change, please contact the Office of Business Development at (517) 373-2377. Additional information regarding DBE Suppliers can also be found in the MDOT DBE Program Procedures at www.michigan.gov/mdotdbe. Thank you for your assistance and the services you provide to MDOT.

Sincerely,



Lisa S. Thompson, Administrator
Office of Business Development

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (SUMMARY)

Page _____ of _____

Prime contractor must submit this form within 5 calendar days of the Bid Letting to the Michigan Department of Transportation by email to mdot-awards@michigan.gov specifying DBE firms to be used on this project.

Prime contract dollar value: \$ _____

Check this box if this project does not have a DBE participation goal (i.e., race-neutral)

Check this box if the Prime Contractor is a Certified DBE

Check this box if the Prime Contractor is requesting a GFE (Form 0188 or 0188A)

DEPARTMENT'S PARTICIPATION GOAL

% = \$

CONTRACTOR PROPOSED PARTICIPATION

LETTING DATE

LETTING ITEM NO.

CONTRACT ID

PRIME CONTRACTOR

PRIME EMAIL ADDRESS

PRIME PHONE

PRIME CONTACT PERSON

NOTE: Each company listed on the following pages must have current DBE certification on file in the designated areas of work 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. Complete a separate following page for each DBE subcontractor. **Current DBE Directories are maintained on MDOT's Web Site: <http://www.michigan.gov/mucp>.**

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 as 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" and section 102.18 of MDOTs "Standard Specification for Construction."

List the DBEs for the project. Include their MDOT Vendor Number, work code(s) being performed, and the dollar value of the proposed subcontract or purchase order. If the firm is Supplying as a Regular Dealer, list the 60% amount below. Detailed information shall be provided on the following pages.

DBE NAME	MDOT VENDOR #	MDOT WORK CODE(S) (IF APPLICABLE)	DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
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DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT
DBE NAME	MDOT VENDOR #		DOLLAR AMOUNT

Federal regulations require work committed to DBEs may not be performed by others without prior consent by MDOT. MDOT Form 0196 must be completed and fully approved prior to substitution, along with approved participation sheets for the substitute DBE(s). Failure to meet the above requirements may result in sanctions. Please refer to the MDOT DBE Program Procedures for DBE Substitution and CUF requirements. This is not binding until signed by all parties and approved by Contract Services Division.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (DETAIL)

<input type="checkbox"/> Check if this is a post-award modification of the original DBE commitment	LETTING DATE
<input type="checkbox"/> Check this box if this contract has no DBE participation goals (i.e., race-neutral)	LETTING ITEM NO.
DBE FIRM NAME	CONTRACT ID
DBE CONTACT PERSON NAME	PRIME CONTRACTOR
ADDRESS	CITY
	STATE
	ZIP CODE
DBE PHONE NUMBER	DBE EMAIL ADDRESS

DBE SUPPLY CREDIT TO BE COUNTED AS (check one): (Must Include cost of delivery for Manufacturers and Regular Dealers)

- BROKER (Count 100% of Broker fees/commissions)
 Manufacturer (Count 100% of the value of goods supplied)
 REGULAR DEALER (Count 60% of the value of goods supplied)
 OR
 REGULAR DEALER / BULK ITEM

Name all suppliers DBE Supplier will be purchasing items from for this project (if applicable): _____

Method of Delivery to project site (if applicable): _____

Anticipated Date(s) of Transaction: _____

FOR DBE SUPPLY CREDIT – Form 0178 Must be accompanied by a completed MDOT Form 0193** (Supplier Affidavit)

FULLY DESCRIBE THE TYPE OF WORK OR SERVICE THIS DBE WILL PROVIDE AND APPLICABLE WORK CODE(S) AND/OR NAICS CODE(S). **FAILURE TO PROVIDE ALL RELEVANT INFORMATION WILL RESULT IN THE DELAY OF AWARD.**

FOR DBE TRUCKING CREDIT (RJ) – Form 0178 Must be accompanied by a completed MDOT Form 4101** (Trucking Worksheet)

MDOT WORK CODE(S) (If Applicable):	NAICS CODE(S):	DETAILED DESCRIPTION OF WORK BEING PERFORMED (if Applicable - MUST INCLUDE LOCATION(S) OF WORK BEING PERFORMED, MATERIAL TYPE/GRADE/CLASS, QUANTITIES AND PRICE):	DOLLAR AMOUNT FOR DBE CREDIT:

(ADD ADDITIONAL PAGES IF NECESSARY)

TOTAL: \$ _____

ACKNOWLEDGED BY

By signing this commitment, we certify that the DBE firm is MDOT-certified as a DBE, and, if prequalification is required, is prequalified in the types of work to be performed. THIS IS NOT BINDING UNTIL SIGNED BY ALL PARTIES AND THE CONTRACT IS AWARDED BY CONTRACT SERVICES DIVISION.

DBE AUTHORIZED SIGNATURE	TITLE	DATE
PRIME CONTRACTOR AUTHORIZED SIGNATURE	TITLE	DATE

** Additional forms for DBE Trucking (4101) and Supply (0193) must be submitted by the Prime Contractor to Contract Services Division in accordance with MDOT's DBE Program Procedures.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUPPLIER PARTICIPATION AFFIDAVIT
— TO BE COMPLETED BY THE PRIME CONTRACTOR —**

By signing this document the successful bidder/prime affirms it has reviewed the DBE requirements under 49 CFR 26.55 found in the project proposal. The signature is also assurance from the successful bidder/prime that it believes the arrangements with the DBE(s) designated on this form and the corresponding DBE Participation Form(s) (MDOT form 0178) are in compliance with the DBE regulations.

Please contact the Office of Business Development (OBD) via email (mdot-dbe@michigan.gov) or by phone 1-866-DBE-1264, if you need additional information or have questions regarding the completion of this form or submittal of this information. Return completed form to: Contract Services Division for approval along with the DBE Participation Form(s) (MDOT form 0178).

CONTRACT ID	PRIME CONTRACTOR
DBE SUPPLIER(S)	

COMPLETE THIS SECTION FOR LIQUID ASPHALT SUPPLY ONLY

1. Has the DBE liquid asphalt supplier been pre-approved by MDOT? No Yes

2. Has your company already purchased any of the liquid asphalt cement for this project (as winter fill) from your designated DBE liquid asphalt supplier? No Yes, if yes, provide the following information

AMOUNT/QUANTITY OF WINTER FILL SUPPLIED BY DBE TO DATE	DATE(S) OF TRANSACTION(S)	PRICE FOR THE QUANTITY OF WINTER FILL SUPPLIED BY DBE TO DATE
		\$ _____ X 60% = \$ _____

3. How much liquid asphalt remains to be purchased from the DBE for this project? _____ Tons

a. How much of this amount will be claimed for DBE credit?

_____ tons at \$ _____ per ton* = \$ _____, x 60% = \$ _____

b. How much of this amount will NOT be claimed for DBE credit?

_____ tons at \$ _____ per ton* = \$ _____, x 60% = \$ _____

***NOTE: Price-per-ton MUST include the delivery charge.**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUPPLIER PARTICIPATION AFFIDAVIT
— TO BE COMPLETED BY THE PRIME CONTRACTOR —**

CONTRACT ID	PRIME CONTRACTOR
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As the successful bidder/prime (including our affiliates and subsidiaries), we attest to the following:

- We did not/will not negotiate with the DBE's suppliers/sources for the material supplied/being supplied by the DBE(s) on this project/contract.
- We did not/will not act as guarantor for the purchase of materials on behalf of the DBE supplier(s) on this project/contract.
- No sales of materials between the successful bidder and its affiliates or subsidiaries are included in the proposed DBE participation on this project specified in MDOT Form 0178.
- We will not lease any equipment to the DBE supplier(s) on this project/contract.
- The DBE(s) did not and will not use any of the successful bidder's equipment or the successful bidder's affiliates' or subsidiaries' equipment on this project/contract, unless an arrangement for specialized equipment has been approved by MDOT, in accordance with MDOT's Bureau of Highways Instructional Memorandum 2013-12.
- All payments to the DBE's suppliers/sources for this project/contract are made by the DBE(s) from the DBE's own independent bank accounts – not from an account of the successful bidder or its affiliates or subsidiaries.
- No payments to the DBE's suppliers/sources on this project/contract are made via any joint account held by the successful bidder (or any of its affiliates or subsidiaries) and the DBE(s).
- Prior to any joint check arrangement with the DBE supplier (for payment to the DBE's supplier/source), we will submit MDOT Form 0183 for MDOT approval.
- We will submit a purchase order to the DBE(s), for submission to MDOT.

False statements on this form or fraudulent documentation provided could result in sanctions by federal authorities and/or MDOT.

PRIME CONTRACTOR AUTHORIZED SIGNATURE	DATE
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FOR MDOT INTERNAL USE ONLY	
MDOT REVIEWER APPROVAL SIGNATURE	DATE

F. Commercially Useful Function (CUF)

DBEs are required to perform a Commercially Useful Function (CUF) on US DOT-assisted contracts. CUF requirements are included in 49 CFR § 26.55. Additional information regarding DBE CUF compliance can be found in BOHIM 2013-12, titled “Disadvantaged Business Enterprise (DBE) Commercially Useful Function (CUF) Compliance”. The procedures in this BOHIM apply to all federally funded MDOT and local agency projects that include participation of a DBE certified company. It should be noted that this BOHIM applies to all projects with work completed by DBE firms, not just projects with a DBE goal.

BOHIMs are available at www.michigan.gov/mdot. Click “Reports, Publications and Specs” “Manuals, Guides, Advisories & Memos,” “Highway Instructional Memos”.

Failure to perform a CUF can result in removal of eligibility to participate as a DBE if it is determined that the DBE owner(s) no longer meets certification standards for ownership or control. Prime contractors also are subject to sanctions when DBEs do not perform a CUF on their federally funded projects.

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

- DBEs must be responsible for execution of the work of the contract and carry out its responsibilities by actually performing, managing, and supervising the work involved.
- The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

A DBE does not perform a CUF if:

- Its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. Such pass-through arrangements are in violation of federal regulation and may result in removal of the firm’s eligibility to participate as a DBE.
- A DBE does not perform or exercise responsibility for at least 50 percent of the total cost of its subcontract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

The following bullets describe possible CUF violations:

Management

- Supervision of the DBE’s employee(s) is performed by another contractor or personnel associated with another company
- The DBE provides little or no supervision of contracted work
- The DBE's superintendent is not a regular, full-time, exclusive employee of the DBE

- The DBE hasn't been issued a subcontract, purchase order, or other contractual document
- The DBE firm's owner is not aware of the status of the work, the employees and/or the performance of the business
- The DBE company owners are rarely or never seen

Equipment

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

Workforce

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

Materials

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

Performance

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

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

A DBE subcontractor listed and approved in the prime contractor's commitment (MDOT Form 0178) or an approved substitute DBE (MDOT Form 0196) cannot be terminated without MDOT's prior written consent for good cause (see the "Post Award Good Faith Efforts and DBE Substitution Requests" section found in the "Good Faith Effort Processes"). Per 49 CFR Part 26.53 (f), the prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the prime contractor obtains written approval (by MDOT using form 0196). Unless approval is provided for DBE substitution, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE (approved by MDOT using form 0178).

Primes are required to submit MDOT Form 2124A, Prime Contractor Bi-Weekly Statement of Subcontractor/Supplier Payments, as specified on the form and in the project proposal. MDOT uses this information to maintain a running tally of payments made to DBEs, as required by regulation. All forms are available on the Web at www.michigan.gov/mdot, "Doing Business", Forms".

CUF Reviews and Outcomes

MDOT conducts field monitoring of contractors to assure that DBE firms perform a CUF and that work committed to DBE companies is actually performed by said companies. This will be accomplished through the use of form 4109, Commercially Useful Function (CUF) Review. Completion of this form is required for all DBE companies on all federally funded projects including projects with no DBE goal. This includes DBE truckers, suppliers and other vendors where a subcontract is not required. In many cases, construction staff will need to reference the DBE commitment information to ensure that all companies are reviewed. Form 4109 is available at the following website: http://www.michigan.gov/mdot/0,4616,7-151-9625_23109---,00.html

At the completion of the project the construction/project engineer will certify that all DBE companies provided a CUF. This certification will be noted on form 1105, Final Estimate Package Memo. The certification language options will be as follows:

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

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

companies which have been forwarded to the Office of Business Development (OBD) for further investigation.

Companies: _____

Investigations are done on DBE firms that may not be performing a CUF as a result of field monitoring or based on receipt of a third-party complaint. Investigations showing a DBE may not have complied with all CUF requirements on a project(s) will result in the firm being called in for a conference with MDOT to discuss the alleged violation(s). The DBE Firm shall be given an opportunity to present material(s) to rebut the alleged violation(s).

Failure to attend a conference may result in the removal of work classification(s) and/or NAICS codes. Following the CUF conference, the DBE administrator will review information received and make a determination regarding the DBE firm's compliance with federal regulations. Firms are notified in writing of the determination. Determinations include the following possible outcomes:

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

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

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

1. The prime contractor is responsible for notifying the project engineer and OBD immediately if they have evidence that a DBE may not be performing a CUF. The

prime contractor will be determined to have a deficiency in DBE participation corresponding to the dollar value of the DBE's work that did not meet federal regulations.

2. The violation will be reported to the Contract Performance Evaluation Review Team (CPERT). The CPERT will, per its procedures, review the violation to review the next steps.
3. Serious violations or evidence of DBE program fraud may also be referred directly to the MDOT Prequalification Committee for sanction, per the "Administrative Rules Governing the Prequalification of Bidders for Highway and Transportation Construction Work."

Counting DBE Participation toward Contract Goals

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

1. Count the entire amount of that portion of a construction contract (or other contract not covered in #2 below) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided it is determined that the fee is reasonable and not excessive as compared with fees customarily allowed for similar serves.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The only exception to this rule is listed under Trucking.

Counting and Commercially Useful Function (CUF)

Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a CUF on that contract. A DBE contractor's work cannot be counted toward a prime

contractor's final compliance with its DBE obligation until the DBE has been paid in full for the work performed.

DBE Truckers

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

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

Example to paragraph (5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

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

Example to paragraph (6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

For purposes of this section regarding trucking, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must keep a copy of the signed lease agreement (sent to OBD) in the truck covered by the lease agreement and furnished to MDOT representatives upon request. A lease agreement template (MDOT Form 4111) is available on the forms page.

DBE truckers must submit a completed DBE Heavy Construction Trucking Worksheet (MDOT Form 4101) for approval by OBD prior to working on a project. The trucks listed on form 4101 must meet the initial requirements above for approval. Form 4101 accompanies the signed DBE Participation (MDOT Form 0178) commitment. Both forms are available at www.michigan.gov/mdot, "Doing Business", Forms".

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

DBE Suppliers

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

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

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

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

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

A broker, with respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, may count toward DBE goals the

entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided MDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.

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

Guidance for DBE Participation as Suppliers

The successful bidder/prime contractor is responsible for compliance with the governing DBE regulations (49 CFR 26.55) that are included in each MDOT project proposal and on the internet at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. Prime contractors are to make every effort to ensure that arrangements and practices on the project are in line with the DBE regulations.

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

1. The DBE must directly negotiate (make arrangements for – i.e., receiving price quotes, agreeing to pricing, and ordering of materials) with their supplier(s) for the materials they are providing for the project. The prime is not to negotiate on behalf of the DBE with the DBE's supplier. DBEs that act as Regular Dealer-Bulk Items will need to provide information on their delivery equipment and accounts with their suppliers (similar to what is done with liquid asphalt). This is done through submittal of MDOT Form 0192 (DBE Regular Dealer-Bulk Item Supplier Data Sheet).
2. The DBE must arrange for the delivery of materials it supplies for the project. Documentation of the DBE's delivery of the materials (such as equipment information, Bills of Lading, delivery tickets, load tickets, invoices, bank statements ...etc.) must be maintained by the DBE and submitted if requested by MDOT.
3. The DBE may use leased equipment on the project only if there are long term lease agreements for the equipment. Any supplementing of the regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. This equipment may not be leased from the prime contractor (or any affiliate of the prime contractor) for whom the DBE is supplying the project's material. The DBE must be able to supply all lease agreements upon request by MDOT.

4. DBEs must pay their suppliers with their own funds. The prime is not to pay the DBE's suppliers directly for the materials the DBE is designated to supply. Payments made by DBEs for material they purchase must come from their own independent bank accounts. A DBE may not acquire material using funds from bank accounts belonging to or shared with the prime contractor.
5. No sales between the prime and any of its affiliates via the DBE are to be counted toward the project DBE goal.
6. Any joint check arrangement must be pre-approved by MDOT before the arrangement or transaction takes place. This is done through submittal of MDOT Form 0183. A joint check is a two-party check between a subcontractor, a prime contractor, and a materials supplier. Joint checks are used to guarantee payment to the supplier for materials used by the subcontractor. MDOT Form 0183 must be used for all joint check arrangements.
7. **Verification of Regular Dealer-Bulk Item Suppliers:**

Upon first receipt of a proposed transaction that includes a DBE acting as a Regular Dealer-Bulk Item (supplying petroleum products, steel, cement, gravel, stone or liquid asphalt), MDOT will obtain from the DBE a completed MDOT Form 0192 (DBE Regular Dealer-Bulk Item Supplier Data Sheet) and all supplemental documentation, to ensure:

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

The DBE may provide a completed MDOT Form 0192 at any time and in anticipation of acting as a Regular Dealer-Bulk Item, however MDOT may request an updated Form 0192 and/or supplemental documentation at any time.

8. **Pre-Award Approval:**

Primes will submit for review the DBE Supplier Participation Affidavit (MDOT Form 0193) for approval along with the DBE Participation Form (MDOT Form 0178). The prime affirms in the affidavit that it has reviewed the DBE requirements under 49 CFR 26.55 found in the project proposal, etc., and believes that its proposed arrangement with the DBE supplier is in compliance with the regulations. MDOT's Contract Services Division will receive and forward the Supplier Participation Affidavit to the designated

Office of Business Development (OBD) staff for approval (similar to what is done for trucking and liquid asphalt). OBD staff will make every effort to complete the review of the Affidavit and make a determination within five (5) working days. This review includes:

- Determining that the prime has selected an eligible DBE. This is done by comparing the MDOT work code(s) and NAICS code(s) listed in the proposed arrangement with the MDOT work code(s) and NAICS code(s) assigned to the DBE. (Contract Services and OBD both do this). The DBE must be DBE certified in the type of work requested for DBE credit.
- OBD staff will cross check the DBE's file and participation on other projects to determine that the DBE is not over its distribution capacity or credit limit.
- OBD staff may request a purchase order to be submitted with each project, post-award and prior to delivery.
- OBD staff will ensure that an anticipated date of transaction with the DBE is included in the affidavit the prime submits.
- The DBE is not allowed to lease equipment from the prime or the prime's subsidiaries/affiliates. OBD staff will review the DBE's record to ensure that the DBE does not lease equipment from the prime specified on the project under review and has acceptable leases on file with OBD.
- If a license or certification is required for the product and/or service to be provided on the project, the DBE must hold that license and/or product certification in order to perform a CUF.

9. **Follow-up review:**

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

DBE Regular Dealers-Bulk Items will be required to complete an MDOT questionnaire (MDOT Form 0194) regarding DBE supplier activities on the project. The OBD staff will contact the DBE within 10 days following the date the prime specified on the affidavit to determine if the sale and delivery of material took place. Staff will continue to follow up until the transaction takes place. Once the date of transaction is determined, the questionnaire will be forwarded to the DBE. The questionnaire is to be returned to OBD within 10 days.

OBD staff will provide the Project Engineer/Project Office/Field Staff any and all documents on file necessary to complete a Commercial Useful Function (CUF) review on MDOT Form 4109.

All forms are available on the Web at www.michigan.gov/mdot, "Doing Business", Forms".

Use of Joint Checks to Guarantee Payment for Materials and Supplies

With prior approval, a joint or two-party check between a subcontractor, a prime contractor, and a materials supplier who is neither the prime contractor nor an affiliate of the prime contractor may be used to guarantee payment for materials. The Application to Use Joint Checks form (MDOT Form 0183) is available on the Web by going to www.michigan.gov/mdot, "Doing Business", "Forms".

An acceptable joint-check arrangement must include the following:

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

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