

Disadvantaged Business Enterprise Program Manual



MDOT
The Office of Civil Rights
P.O. Box 1850
Jackson, MS 39215-1850

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I. INTRODUCTION

The Mississippi Transportation Commission is governed by three elected Commissioners, and it is vested with the authority and responsibility to coordinate and develop a comprehensive balanced transportation system for the State of Mississippi. In order to carry out those responsibilities, the Mississippi Transportation Commission is authorized to make such contracts and execute such instruments containing reasonable and necessary terms, provisions, and conditions for the purpose of obtaining or securing financial assistance, grants, or loans from any agency or department of the United States.

The operational activities of the Commission are carried out by the Mississippi Department of Transportation which is responsible for the design, construction and maintenance of the state highways of the State of Mississippi. The Office of State Aid Road Construction is a Division within the Mississippi Department of Transportation which deals with the highways which are not state highways but which consist of the main collectors and distributor routes feeding into local trade areas or into the state highway system. The Transit Division allocates and oversees federal transit funding to local, state and tribal governments to provide mass transit services. Its primary responsibilities include developing and administering general public transit and specialized transportation programs as well as training and assistance projects. The Aeronautics Division assists public airports in developing an effective air transportation system in this state and provides technical administrative and financial assistance to airport owners for federal and state financial construction projects.

In addition to funding from various resources of the State of Mississippi, the Mississippi Department of Transportation receives funding from the United States Department of Transportation. As a condition of receiving such funds, the Mississippi Transportation Commission and the Mississippi Department of Transportation must comply with all federal statutes, regulations, guidelines and other requirements of the federal agencies.

The United States Department of Transportation has the responsibility of insuring that firms competing for its financially assisted contracts are not disadvantaged by unlawful discrimination and issued regulations in 1990 as part of its policy concerning the program commonly known as the Disadvantaged Business Enterprise (DBE) Program.

The new regulation became effective March 4, 1999 and requires the primary recipient of funding by the United States Department of Transportation, as a condition of receiving federal funding, to develop a Disadvantaged Business Enterprise program by September 1, 1999. The Mississippi Department of Transportation (MDOT), its Office of State Aid Construction, Public Transit Division and Aeronautics Division are required to establish yearly overall goals based on the local availability of DBEs, that are ready, willing, and able to participate in MDOT contracts. It is required that to the maximum extent possible that race-neutral means be used to achieve the annual DBE participation goals by qualified DBE participants. MDOT goals have been established for those contracts for which it received federal highway and federal transit funds. MDOT does not own any airports and thus receives no funds as authorized by 49 U.S.C. 47101, and has established no goals for the Aeronautics Division; however if such funding does become available to MDOT appropriate goals will be established.

**DBE PROGRAM
MISSISSIPPI DEPARTMENT OF TRANSPORTATION
JACKSON, MISSISSIPPI**

II. Definitions of Terms

The terms used in this program have the meanings defined in 49 C.F.R. §26.5. In the administration of its DBE Program, MDOT will act in accordance with guidance and interpretations when issued by USDOT in accordance with 49 C.F.R. §26.9. (See Appendix A)

III. Objectives /Policy Statement (§§26.1, 26.23)

As a recipient of federal financial funding of the United States Department of Transportation, The Mississippi Department of Transportation has established a Disadvantaged Business Enterprise (DBE) Program as set forth herein and hereby provides its assurance that it will comply with the provisions of this program and the regulations of the United States Department of Transportation as set forth in 49 C.F.R. Part 26.

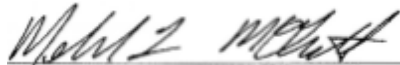
The Mississippi Transportation Commission and the Mississippi Department of Transportation (MDOT) are committed to the objectives of the DBE Program and it is their policy to fully support and comply with 49 C.F.R. Part 26 and all other applicable statutes, regulations and guidelines of the United States Department of Transportation. In order to achieve these goals, it is the policy of MDOT:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the Department's highway, transit, and airport financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

MDOT has designated a DBE Liaison Officer (DBELO) within the Office of Civil Rights who is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is in accordance with the same priority as compliance with all other legal obligations incurred by the MDOT in its financial assistance agreements with the Department of Transportation.

MDOT has established a Certification Committee to certify eligible DBEs as required by 49 C.F.R. Part 26 to participate in federally assisted contracts. Certified, eligible DBEs will be included in a DBE directory. To meet the maximum feasible portion of its overall goal by race-neutral means, MDOT will make this policy statement available to all branches of State government and post it for public viewing. It will be distributed to DBE and non-DBE communities that perform work on USDOT-assisted contracts by newspaper legal notices, and other appropriate means. In meeting its race-neutral participation policy, it will make available at no costs to the general public copies of specimen proposals in order to make DB Es aware of contract opportunities and projects. In addition, open pre-bid meetings are scheduled prior to the acceptance of any bids in order to inform all contractors and subcontractors of the nature of projects and to provide the opportunity for those ready, willing and able to submit proposals as prime or subcontractors.

The Mississippi Transportation Commission and the Mississippi Department of Transportation are committed to the objectives of the DBE Program and it is their policy to fully support and comply with 49 C.F.R. Part 26 and all other applicable statutes, regulations, and guidelines of the United States Department of Transportation. It is the policy of MDOT to provide a level playing field, to foster equal opportunity in all US DOT assisted contracts, to improve the flexibility of the DBE Program, to reduce the burdens on small businesses, and to achieve that amount of participation that would be obtained in a non-discriminatory market place. It is the policy of MDOT that there will be no discrimination in the award and performance of federally assisted contracts on the basis of race, color, sex, or national origin.



Melinda L. McGrath, P.E.
Executive Director
Mississippi Department of Transportation

Date 5/26/16

IV. Nondiscrimination (§26.7)

MDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 C.F.R. Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MDOT will not, directly or through contract or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

V. Records MDOT Will Keep and Report: (§26.11)

Bidders List

As a means of determining the relative availability of ready, willing, and able DBEs, MDOT will maintain a bidders' list which will include all firms that bid on prime contracts or quote subcontracts on USDOT financially assisted projects. The purpose of this requirement is to allow use of the bidder's list approach in calculating overall goals. The list will include both DBEs and non-DBEs. The list will be supplemented on a regular basis and will include the:

- a. firm name;
- b. firm address;
- c. firm's status as a DBE or non-DBE;
- d. the age of the firm; and
- e. the annual gross receipts of the firm.

All bidders will provide basic information that includes name of the firm, contact person, address, and DBE/non-DBE status pertaining to themselves and any subcontractor that submits a quote to them in order to determine all firms which are ready, willing, and able to perform work which is financially assisted by the USDOT. MDOT will collect this information as an attachment (Form OCR-485) to the bid documents. Bid proposals submitted without an OCR-485 will be considered an irregular bid. MDOT will follow up on a yearly basis to verify the information above and obtain additional information that includes the age of the firm and gross receipts.

Uniform Report of DBE Commitments/Awards and Payments

MDOT will report DBE participation to the Federal Highway Administration (FHWA) in an accurate and timely manner by submitting Uniform Report of DBE Commitments/Awards and Payments report on June 1st and December 1st each year. MDOT will also report DBE participation to the Federal Transit Authority, and where appropriate, to the Federal Aviation Administration in an accurate and timely manner by submitting Uniform Report of DBE Commitments/Awards and Payments report at the appropriate time as specified by the operating administration.

MAP-21Data

MDOT will also report on an annual basis information required by MAP-21 on the percentages of DBEs in the state owned by non-minority women, minority women, and men on January 1st of each year.

VI. Federal Financial Assistance Agreement Assurance (§26.13)

Each financial assistance agreement which MDOT signs with a USDOT operating administration will include the following assurance:

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

In addition, to assure the compliance indicated above, MDOT will require that each contract which MDOT signs with a sub recipient or a contractor (and each subcontract the prime contractor signs with a subcontractor) includes the following assurance:

“The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MDOT deems appropriate, which may include, but is not limited to:

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

VII. DBE Program Updates (§26.21)

As a direct recipient of Federal financial funding of the United States Department of Transportation, MDOT must have an approved DBE Program. MDOT will continue to carry out this program until all funds from the USDOT financial assistance has been expended and will provide to the USDOT updates representing significant changes in the program. Sub-recipients are not required to have a separate approved DBE Program but instead must follow MDOT's approved plan.

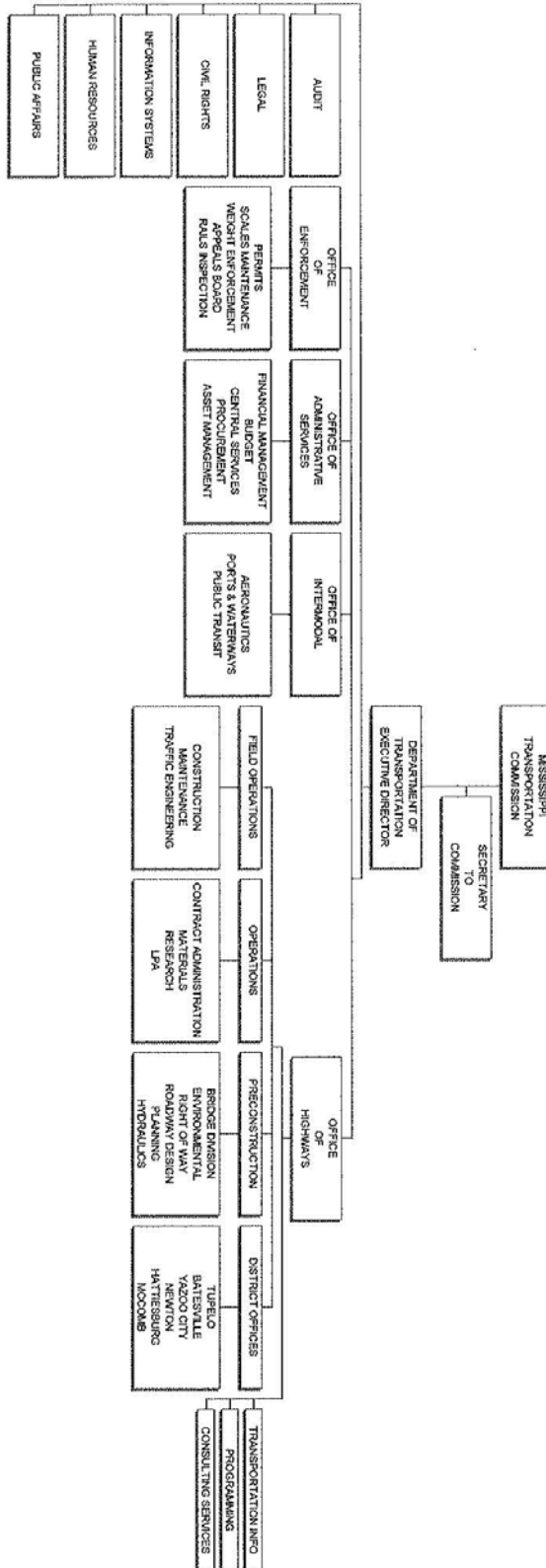
VIII. DBE Liaison Officer (DBELO) (§26.25)

MDOT has designated an employee within the Office of Civil Rights as the DBE Liaison Officer:

Carolyn F. Bell, Civil Rights Director
Mississippi Department of Transportation
Office of Civil Rights
P.O. Box 1850
Jackson, MS 39215-1850
Telephone: (601) 359-7466

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MDOT complies with all provisions of 49 C.F.R. Part 26. The DBE Liaison Officer has direct, independent access to the Executive Director of MDOT concerning all DBE matters and will have adequate staff to implement, administer, and monitor the DBE Program. The Manager of the Public Transit Division shall serve as adjunct staff to the MDOT Liaison Officer on matters pertaining to the public transit industry.

MISSISSIPPI
DEPARTMENT OF TRANSPORTATION



OFFICE OF CIVIL RIGHTS ORGANIZATION CHART



The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The name of the DBE Liaison Officer and contact information can be found at www.mdot.ms.gov. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by the USDOT.
2. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
3. Identifies contracts and procurements so that DBE goals are included in solicitations and monitors results.
4. Analyzes program progress toward goal attainment and identifies ways to improve progress.
5. Participates in pre-bid meetings.
6. Advises the Director on DBE matters and achievement.
7. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Acts as liaison to the Uniform Certification Process in the State of Mississippi.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains the updated MDOT directory on certified DBEs.
13. And such other duties as imposed by the Executive Director of MDOT.

As part of MDOT's policy to support and encourage the DBE Program, the Liaison Officer and the Manager of the Public Transit Division will make available a copy of the DBE Policy and the DBE Directory to all MDOT Districts and Divisions, to all highway construction contractors of the State of Mississippi, to manufacturers of products used in the highway construction industry and public transit contractors within the State of Mississippi, to all contractors listed on MDOT's "Notice to Bidders," to all certified DBEs in Mississippi, to all Planning Districts within the State of Mississippi, to all municipalities and counties of this state, to various associations that represents contractors in the highway construction and public transit industry, and upon request, to any other agency, business, or individual. These documents may also be obtained via our website at www.gomdot.com.

IX. DBE Financial Institutions (§26.27)

It is the policy of MDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on USDOT assisted contracts to make use of these institutions. MDOT has thoroughly investigated the full extent of services offered by banks owned and controlled by DBEs in the community. Based on this search there are no DBE owned banks in the State of Mississippi. MDOT will investigate any new banks established in the area in the future that are owned by DBEs and use their services when feasible.

MDOT will provide the following notification to each prime contractor who will perform on a USDOT-assisted project:

“The MDOT encourages you to make the greatest feasible use of the services offered by banks owned and controlled by DBEs. Information on these services may be obtained from the DBELO of MDOT or by contacting the Mississippi Bankers Association in Jackson, Mississippi, (601) 948-6366.”

X. Prompt Payment Requirements: (§26.29)

MDOT recognizes that prompt payment requirements are an important race-neutral mechanism that can benefit both DBEs and non-DBEs.

The following language can be found in the Mississippi Standard Specifications for Road and Bridge Construction (Red Book). The Red Book in its entirety is made a part of the contract through the Notice to Bidders No. 1.

“The Contractor must pay subcontractor(s) for satisfactory performance of their contracts no later than 15 calendar days from receipt of payment from the Department. Within 15 calendar days after receiving payment from the Department for work satisfactorily performed, the Contractor shall make prompt payment to all sub-contractors or materials suppliers for all monies due.”

As of January 1, 2004, MDOT no longer holds retainage on the Prime Contractor and therefore the Prime Contractor may not withhold retainage on the subcontractors. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MDOT. This request for delay or postponement should be made to the MDOT, Office of Civil Rights prior to the 15-day deadline for making prompt payments to the subcontractor(s). This clause applies to both DBE and non-DBE subcontractors. Failure to comply with the prompt payment requirement will result in the prime contractor’s monthly estimates being withheld until the requirements of prompt payment have been fulfilled.

In the event of a dispute concerning the subcontractor’s performance that would result in a delay in payment, MDOT shall request in writing a detailed description of the dispute and all supporting documentation. Information provided would be verified through the Project Engineers and the official project diaries. This information would be reviewed by the Office of Civil Rights in consultation with MDOT’s legal division to determine whether or not the dispute is related to the subcontractor’s work performance. If, following a review of the project diaries and any other necessary documentation, it is determined that the dispute is related to the subcontractor’s work performance, the progress estimate to the prime contractor will not be withheld. However, payment to the subcontractor may be withheld until the dispute is resolved. A corrective action timeline should be created by the contractor and provided to the subcontractor to resolve the disputed issues. A copy of this timeline should also be provided to the MDOT Office of Civil Rights. Once the issues are resolved, MDOT may perform an inspection to ensure that all items have been satisfactorily resolved and if so, payment shall be released to the subcontractor. MDOT Office of Civil Rights shall follow up to ensure payment is released when work is satisfactorily complete.

If it is found that the dispute is not supported by the record or not related to the subcontractor’s performance then the contractor would be required to comply with the

prompt payment requirements of the contract. A prime contractor may not withhold payment to a subcontractor that has satisfactorily completed work on a contract (contract A) as a means to address a dispute between the prime contractor on an unrelated contract (contract B). That would not constitute a legitimate dispute over the subcontractor's performance on contract A.

As a recipient of Federal Aid Funds through MDOT, each municipality, as a part of their Disadvantaged Enterprise Program, has elected to no longer hold retainage on the Prime Contractor and therefore the Prime Contractor may not withhold retainage on the subcontractors in accordance with 49 CFR, Part 26.29(b)(3)(Appendix D).

MDOT recognizes that Section 65-9-11, Mississippi Code of 1972, as amended, requires that no progress or final estimate, either on a contract or a force account project, shall be paid by the State Aid Engineer and the Office of State Aid Road Construction unless approved by the State Aid Engineer as required by law and on all such contracts or force account projects a percentage of not less than two and one-half percent (2 1/2 %) nor more than ten percent (10%) of each estimate thereon paid shall be retained until final acceptance of such project. The amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld from the prime contractor. The Office of State Aid has elected to return retainage in accordance with option three as outlined in 49 CFR, Part 26.29(b)(3) (Appendix D).

A contractor shall not put any language into a subcontract that contradicts the requirements of the DBE Program.

XI. DBE Directory (§26.31)

To assist interested firms in identifying certified DBEs, MDOT presently maintains and widely distributes the Mississippi Unified Certification Program (UCP) DBE Directory which identifies all firms certified as being eligible to participate as DBEs in MDOT's DBE Program. The listing for each firm includes its address, phone number, and the types of work the firm has been certified by UCP Certification Committee to perform as a DBE.

MDOT will revise its Directories at least monthly, and will make updated information available to contractors and the public upon request. MDOT's DBE directory can be accessed online at www.mdot.ms.gov under the current letting calendar tab. MDOT has adopted and does participate in a Unified Certification Program as described in 49 C.F.R. §26.81. A copy of Mississippi UCP can be found via our website at www.mdot.ms.gov (See also Appendix I).

A Mississippi UCP Application form can be found in Appendix C or via our website at www.mdot.ms.gov.

XII. Overconcentration of DBES in Certain Types of Work (§26.33)

If MDOT determines that its certified DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, it will devise appropriate measures to address the over concentration and submit them to its operating administration for approval.

If MDOT determines that there is over concentration, corrective action will not be used until such are approved by the USDOT. If such approval is obtained, the measures will become part of MDOT's DBE Program.

XIII. Business Development Program/Mentor-Protégé Programs (§26.35)

It is not the intention of MDOT to establish or use a mentor-protégé program at this time.

A Final Rule was issued by the USDOT that requires all state departments of transportation's to add an additional component to its DBE program to foster small business by February 28, 2012. MDOT has an approved Small Business Concern as a part of its DBE Program (See Appendix B).

XIV. Monitoring and Enforcement Mechanisms (§26.37)

MDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that the USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. MDOT may also use Mississippi Code Section 97-7-10, prosecution for fraud in a government contract, and refer such matters to the proper audit authority, the District Attorney, or the Attorney General of the State of Mississippi for enforcement of any and all applicable laws, both civil and criminal, of the State of Mississippi.

One of the main purposes of 49 C.F.R. Part 26 is to insure that DBEs are actually performing the work committed to them in the process of awarding the contract to the prime contractor. To achieve that objective, MDOT will measure payments actually made to DBEs rather than promises made at the stage when a federally assisted contract is awarded. Credit toward DBE goals will be given to contractors only when payments are made to MS UCP certified DBEs.

MDOT will also keep a running tally on each federally assisted contract and the extent to which performance matches the commitment made by the prime contractor. MDOT Office of Civil Rights will collect payment information from the OCR-484 and the OCR-482 form and input computer system used to manage the DBE Program. Prime contractors whose performances fall short of original commitments will be subject to MDOT's compliance mechanism as outlined in MDOT's Notice to Bidders No. 5266 (Appendix C).

In order to measure compliance in its highway construction contracts, MDOT has developed and will provide Form OCR-484 to all prime contractors awarded a contract in which there is any federal financial assistance. The prime contractor must show the actual payments made to any and all subcontractors and submit this form to the Project Engineer. The Project Engineer will attach a copy of the OCR-484 form to the monthly estimate forwarded to the Contract Administration Division for processing and payment. The original OCR-484 is then forwarded to the Office of Civil Rights. If the Prime Contractor fails to submit the required OCR-484, the Project Engineer will hold the monthly estimate until the required paperwork is submitted. As the form will reflect the payments actually

made to subcontractors, the Office of Civil Rights will monitor payments which will indicate whether DBEs are actually performing and being paid for the work committed by the prime contractor. At the end of a project, the Prime Contractor is required to submit an OCR-482 certifying all payments made to DBE subcontractors over the life of the project. Final estimates are not paid until this form has been verified and signed off on by the Office of Civil Rights. MDOT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE Participation.

In order to assure compliance with this Program by the prime contractor, MDOT, as a compliance mechanism, has language in its Notice to Bidders concerning the disallowance of credit toward the DBE goal, withholding progress estimate payments, deducting from payment an amount equal to the unmet portion of the contract goal, debarring the contractor from bidding on any Mississippi Department of Transportation projects.

In order for the Prime Contractor to receive credit toward the contract goal, the DBE must perform a Commercially Useful Function (CUF) as outlined in 49 C.F.R., Part 26.55. The Project Engineer/Inspector will complete an OCR-483 form, the CUF Performance Report, in accordance with MDOT's standard operating procedures. Evaluations reported on this form are used to determine whether or not the DBE firm is performing a CUF. The Prime Contractor should take corrective action when the report contains any negative evaluations. DBE credit may be disallowed and/or other sanctions imposed if it is determined the DBE firm is not performing a CUF. This form should be completed by the appropriate MDOT personnel and returned to the DBE Coordinator (Office of Civil Rights). This form also contains language certifying that the DBE committed to at the time of contract award is actually performed by the DBEs to which the work was committed.

Joint Checks

The FHWA has always maintained the use of joint checks could be allowed but needs to closely monitor to ensure that such a practice did not erode the independence of the DBE firm. Allowing joint checks can make it difficult to determine whether the DBE is performing a commercially useful function. It also makes it much more difficult to gauge the extent to which the DBE is controlling its operations (independent of the other party involved in the joint check arrangement). The cost of material and supplies purchased by the DBE is part of the value of work performed by the DBE to be counted toward the goal. To receive credit, the DBE must be responsible for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and "paying for the material itself." See 49 CFR 26.55(c) (1).

In light of these concerns, MDOT requires the following criteria be met with regard to joint checks: (1) the second party (typically the prime contractor) acts solely as a guarantor, (2) the DBE must release the check to the supplier, (3) the use of joint checks is a commonly recognized business practice in the industry (note: Standard industry practice cannot be shown unless the practice is commonly employed outside of the DBE program for non-DBE subcontractors on both federal and state funded contracts.), (4) MDOT approves the practice before it is used, and (5) MDOT monitors its use closely to avoid abuse.

The use of joint checks can be extended to all subcontractors, DBE and non-DBE. The goal of allowing joint checks is to allow the subcontractor to foster a relationship where within one to two years the firm can establish and/or increase a credit line with the material supplier.

General circumstances to be present to approve joint checks:

- No exclusive arrangement between one prime and one DBE in the use of joint checks that might bring independence into question
- No requirement by prime contractor that DBE is to use a specific supplier nor the prime contractors negotiated unit price.
- No non-proportionate ratio of DBE's normal capacity to size of contract and quantity of material to be provided under the contract.
- DBE must be more than an extra participant in releasing the check to the material supplier. DBE must be able to demonstrate that they perform estimating function, negotiate price, order, arrange delivery, inspect (where applicable), and maintain control of materials.
- DBE must still perform a commercially useful function by actually performing, managing, and supervising the work involved as outlined in 49 CFR Part 26.55(1)

Approval Process:

- DBE submits written request to MDOT for action prior to implementation that includes full and prompt disclosure of the expected use of joint checks.
- Adopt a formalized agreement between all parties that specify the conditions under which the arrangement will be permitted. This agreement should include at a minimum: Name of all parties to include company name, title, contact information that will be included on the joint check; Responsibilities of the person listed and a detailed description of how the process will work.
- Copy of agreement and MDOT approval made part of file.

XV. **Small Business Program (§26.39)**

On or after February 28, 2012 State Departments of Transportations were required to develop a small business component to their DBE Programs. MDOT has an approved Small Business Concern Program (See Appendix B).

XVI. **Quotas (§26.43)**

MDOT does not use quotas in any way in the administration of this DBE program.

XVII. **Establishment of MDOT's Goals for DBE Participation: (§26.45)**

MDOT establishes its overall goal of DBE participation every three years by hiring a qualified consultant that follows the methodology as set forth in 49 C.F.R., Part 26.51 to determine the relative availability of disadvantaged business enterprises using MDOT's DBE Directory, census data, NAICS codes, bidder's list and other related facts. MDOT's proposed goal will be submitted to FHWA by August 1st of the third year.

MDOT will analyze the data it has collected as a result of this Program, will review past performance data including both race-neutral and race-conscious means and their effectiveness, and will participate in outreach meetings with both DBEs and non-DBEs who are participating in the transportation construction industry, (either as consultants, prime contractors, or subcontractors) in order to determine the availability of those DBE firms which are ready, willing, and able to participate in the transportation construction industry in Mississippi. Based upon the collected data MDOT will make the appropriate adjustments for its future DBE goals through methods consistent with 49 C.F.R., Part 26.

XVIII. DBE Shortfall Analysis (§26.47(c))

If the awards and commitments shown on MDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, MDOT will provide a shortfall analysis to FHWA, the Federal Transit Authority, and where appropriate, to the Federal Aviation Administration with 90 days of the end of the fiscal year for approval.

MDOT will analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year. MDOT will then establish specific steps and milestones to correct the problems identified in our analysis and the actions that will be taken to enable MDOT to fully meet the DBE goal for the new fiscal year.

XIX. DBE Goals for Transit Vehicle Manufacturers (§26.49)

The Public Transit Division establishes its goals based on a methodology that takes into account several of the factors contained in 49 C.F.R. Part 26.45. These factors include: using MDOT's goal for FHWA assisted projects; adjusting for demonstrated evidence of local market conditions and past participation by DBEs. Data to support this methodology is obtained from historical DBE data maintained by the Public Transit Division.

MDOT will require that each transit vehicle manufacturer that bids on FTA transit vehicle procurement to certify that it has complied with the requirements of 49 C.F.R., Part 26.49. MDOT, with the approval of FTA, may establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of 49 C.F.R., Part 26.49.

XX. Means MDOT Will Use to Meet its Overall Goals (§26.51 (d-g))

MDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. For the purposes of this program, race-neutral means include gender neutrality. Race and gender-neutral DBE participation includes any situation in which a DBE is awarded a prime contract through customary competitive procurement procedures, or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBEs, and other small businesses participation.
2. Providing information as to financial institutions in the State of Mississippi that are owned and controlled by socially and economically disadvantaged individuals.
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development.
7. Ensuring distribution of the MDOT DBE Directory to the widest feasible universe of potential prime contractors; and
8. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology.
9. Letting contracts under MDOT's Small Business Concern Program. Appropriate contracts valued at \$1 million and under would be set aside and available for bid only by certified small business contractors. See Appendix J methodology and details of program.

MDOT will submit its overall goal for review and approval by the concerned operating administration and its projection of the portion of the goal that it expects to meet through race neutral means. MDOT will establish contract goals to meet any portion of its overall goal it does not project being able to meet using race-neutral means.

In setting contract goals, MDOT will consider the location of the project, items of work that can subcontracted out relevant to certified DBEs located near the project or those that have indicated that they will travel to that location. In setting contract goals on consultant contracts, MDOT considers contracts valued at \$250,000 and over in addition to the items of work that can subcontracted out relevant to certified DBEs located near the project or those that have indicated that they will travel to that location. MDOT does take into consideration that distance or location may not be relevant in all cases with regard to consultant contracts.

The following provisions apply to the use of contract goals:

1. MDOT will establish contract goals only for those USDOT-assisted contracts that have subcontracting possibilities.
2. MDOT may not set a contract goal on every USDOT-assisted contract. However, over the period covered by its overall goal, MDOT will set contract goals so that they will cumulatively result in meeting any portion of its overall goal it does not project being able to meet through the use of race-neutral means.
3. MDOT's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

To ensure that its DBE Program continues to be narrowly tailored to overcome the effects of discrimination, MDOT will adjust the use of contract goals in accordance with the procedures and examples as set forth in 49 C.F.R. 25.51.

XXI. Good Faith Efforts (§26.53 (a-j))

Demonstration of Good Faith Efforts

When MDOT has established a DBE contract goal, it will award the contract only to a bidder/offeree who makes good faith efforts to meet it. MDOT will determine that a bidder/offeree has made good faith efforts if the bidder/offeree does either of the following things:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeree does document adequate good faith efforts, MDOT will not deny award of the contract on the basis that the bidder/offeree failed to meet the goal. MDOT will follow guidance set forth in Appendix C of this Program for determining the adequacy of a bidder/offeree's good faith efforts.
3. If the contract goal is not met by the bidder/offeree and as stated in its bid, the bidder/offeree must include as a part of its bid the facts of its good faith efforts as a matter of responsiveness of the bid. Any decision as to the good faith effort will be considered in view of the guidance included as Appendix A to 49 C.F.R. Part 26.

Information to be Submitted

Construction Contracts

All apparent low responsive bidder(s)/offeree(s) will be required to submit the following information to MDOT within three (3) days of the opening of the bid and prior to MDOT's committing to the award of the contract:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

The OCR-481 form with original signatures of the Prime Contractor and the DBE firm serves as written documentation of the bidder/offeree's commitment to use a DBE subcontractor to meet a contract goal. It also serves as further verification that the DBE subcontractor is aware of the Prime Contractor's commitment to use the DBE firm toward a contract goal. If the contract goal is not met, the Prime Contractor must provide evidence of good faith efforts.

In order for a firm to be deemed eligible to be listed on the OCR-481, that firm must have been certified prior to the construction project being let for contract.

When the Prime Contractor is also a certified DBE firm, the contractor is required to submit an OCR-487 form. This form is also required of any subcontractor who is also a certified DBE firm who subcontracts out a portion of their work to a non-DBE firm. The form is used to determine the exact percentage of DBE credit for the specified project. It should be returned to MDOT with the OCR-481 form, or can also be returned with the Permission to Subcontract forms (CAD-720 or CAD-725).

MDOT will make sure all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before awarding any contract to the bidder/offeree. Only the good faith efforts of the apparent low bidder/offeree will be reviewed for adequacy. If that bidder is determined to have not met a good faith effort, then the next apparent low bidder/offeree good faith efforts will be reviewed and so on until a successful bidder is identified or the Mississippi Transportation Commission elects to reject and rebid the project. In cases where firms are to be paid a stipend for proposal/bid submittal, if all firms either commit to required DBE goal or provide good faith effort documentation, they have met the requirements of the contract with regard to DBE participation and if all other requirements are satisfied, should be awarded the stipend. The adequacy of such good faith efforts will only be reviewed if the proposal/bid was selected. The decision on such matters will be made by the Contract Administration Engineer, the Director of the Office of Civil Rights and the State Construction Engineer.

In a "design-build" or "turnkey" contracting situation, in which the MDOT lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, MDOT may establish a goal for the project.

Consultant Contracts

Consultant selection procedures must be in conformance with MDOT Consultant Selection Standard Operating Procedures. The selected firm will be required to submit the following information to MDOT along with the scope and costing documents:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;

The OCR-481C form with original signatures of the Prime Contractor and the DBE firm serves as written documentation of the bidder/offeree's commitment to use a DBE subcontractor to meet a contract goal. It also serves as further verification that the DBE subcontractor is aware of the Prime Contractor's commitment to use the DBE firm toward a contract goal. If the contract goal is not met, the Prime Contractor must provide evidence of good faith efforts.

In order for a firm to be deemed eligible to be listed on the OCR-481C, that firm must have been certified before the scope and costing documents are submitted to MDOT.

When the Prime Contractor is also a certified DBE firm, the contractor is required to submit an OCR-487C form. This form is also required of any subcontractor who is also a certified DBE firm who subcontracts out a portion of their work to a non-DBE firm. The form is

used to determine the exact percentage of DBE credit for the specified project. It should be returned to MDOT with the OCR-481 form.

Administrative Reconsideration

The Reconsideration Official shall be MDOT's Staff Attorney and will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The bidder/offeror will be provided a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The Reconsideration Official's decision is not administratively appealable to the USDOT.

Good Faith Efforts when a DBE is replaced on a contract

MDOT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. MDOT will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, MDOT will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts to MDOT's Office of Civil Rights. Contract provision must state that the primes will not be entitled to any payment for work or materials without the Office of Civil Rights prior written consent to replace a DBE. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Good cause for termination of a DBE firm includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- It is determined that the listed DBE subcontractor is not a responsible contractor;
- The listed DBE subcontractor voluntarily withdraws from the project and provides

- to you written notice of its withdrawal;
- The listed DBE is ineligible to receive DBE credit for the type of work required;
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- Other documented good cause that is determined to compel the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

XXII. **Counting DBE Participation (§26.55 (a-h))**

Commercially Useful Function

MDOT will count the value of the work toward the DBE goals only if the DBE is performing a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

Joint Ventures

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

DBE Credit

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the 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.

MDOT will 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 managed 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 to be reasonable and not excessive as compared with fees customarily allowed for similar services.

If materials or supplies are obtained from a DBE manufacturer, MDOT will count 100 percent of the cost of the materials or supplies toward DBE goals. 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 credit. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, MDOT will 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 it is determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MDOT will not count any portion of the cost of the materials and supplies themselves toward the DBE goal.

Trucking

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE may also 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.

MDOT also allows that a DBE lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled credit for the total value of the transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. This means for each truck that the DBE owns, insures, and operates using drivers it employees; they can match with one other non-DBE owned truck on the contract.

Counting Credit

MDOT will only count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract after the amount being counted has actually been paid to the DBE.

All MDOT certifications shall be pre-certifications; i.e., certifications that have been made final before due date for bids or offers on a contract on which a firm seeks to participate as a DBE. MDOT will not count the firms participation toward any DBE goal if the firm is not currently certified as a DBE at the time a contract is awarded. MDOT will also not count the dollar value of work performed under a contract with a firm toward the overall goal after it has ceased to be certified.

XXIII. Certification (§§26.61 – 26.73)

All MDOT Certifications will follow the procedures outlined in the Mississippi Unified Certification Program (Appendix I) which incorporates the guidelines outlined in 49 CFR Part 26 Subpart D – Certification Standards and Subpart E – Certification Procedures. MDOT has established a Certification Committee consisting of five (5) members who are familiar with the certification requirements of 49 C.F.R. Part 26 to review and determine whether to certify a firm as eligible to participate as a DBE in the highway construction industry. A separate Certification Committee consisting of persons knowledgeable in the requirements of 49 C.F.R. Part 26 and in public transit matters will follow the same guidelines in determining eligibility for DBE certification in matters relating to federal financial assistance for the public transit industry.

All in-state applicants shall have the right to appear before MDOT certification committee and the committee, in its discretion, shall have the right to require the applicant to be present.

Certification application forms and documentation requirements are found in Appendix “E” “F”, “G”, and “H” to this program. For information about the certification process or to apply for certification, firms should contact the DBELO or visit the website at www.gomdot.com.

Certification Reviews

Firms that have been certified and found eligible under Part 26 will be required to participate in a certification review process no less than every three (3) years in accordance with the provisions of the Mississippi Unified Certification Program. The certification review process may include, but not limited to, an on-site review, submitting annual no-change affidavit, and Personal Net worth Form with supporting documentation.

“No Change” Affidavits and Notices of Change

All DBEs will be required to provide a written affidavit of any change in its circumstances, affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 C.F.R. Part 26 or of any material changes in the information provided with the firms application for certification.

All owners of all certified DBEs are required to submit on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

“I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 C.F.R. Part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the Sponsor under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$3.72 million.”

The DBE is required to submit documentation of the firm’s size and gross receipts with this affidavit per §26.83(j). All currently certified DBE firms will be notified of these obligations. This notification will inform DBEs to submit the “no change” affidavit and owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies and should be submitted within 30 days of the change to MDOT’s DBE Liaison Officer.

Group Membership Determinations

Members of the designated groups identified in §26.67(a) are reputedly presumed socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member

of one of the groups in §26.67(a).

Persons claiming Native American heritage must be enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians. The definition of “Native Americans” in the DBE program rule at (49 CFR § 26.5) was revised in 2014. For a small business owner to have the presumed disadvantaged status as a “Native American,” he or she must be an enrolled member of a federally or state recognized Indian Tribe. Firms applying for certification must provide a tribal card from a federally or state recognized Indian tribe in the State of Mississippi in order to meet the presumed disadvantaged status. Applicants who are not enrolled members of a federally or state recognized Indian Tribe do not qualify as DBE under the presumed disadvantaged status. For those individuals in which Mississippi is their home, they may apply under the guidance of 49 CFR, Appendix E documenting their social disadvantage as it relates to their Native American heritage. Applicants do have the obligation to provide information concerning their economic disadvantage (see §26.67)

Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. MDOT must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

Even if it meets the requirements above, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm’s previous three fiscal years, in excess of \$28.48 million.

Personal Net Worth (PNW)

All disadvantaged owners or applicants and currently certified DBEs, who are eligible under Part 26, as reviewed, are required to submit a statement of personal net worth. The spouse of a disadvantaged owner who is involved in the operation of the firm must also submit a PMW form with the application. Federal Highway Administration issued a final DBE Rule in October 2014. As a part of this final rule the PNW form was revised and to be used nationwide without alteration (See Appendix G). MDOT fully commits to using the new PNW form as provided by FHWA.

The application should be completed in its entirety to include information on the value of the primary residence and on the value of his or her investment in the firm. This information should not be used in the personal net worth determination. The form should be notarized and dated within 30 days of submittal to MDOT.

NAICS Code(s)

MDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need to demonstrate to MDOT only that its

socially and economically disadvantaged owners are able to control the firm with respect to that type of work. Adding additional work does not require the firm to be recertified or submit a new application for certification.

In order to add additional NAICS codes to a firm's certification the owner must;

- Submit a written request outlining the types of work to be added.
- Provide list of any additional equipment owned to perform the work.
- Provide documentation of any additional licenses, certificates, training, course work, etc. the socially and economically disadvantaged owner has obtained related to the requested line of work.
- List any new employees hired to perform the requested line of work.
- Provide a copy of at least one contract the firm has completed performing the requested line of work.

A correct NAICS codes is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. MDOT will rely on the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. MDOT will also create sub codes of broader codes when appropriate to most accurately reflect the scope of work a firm is certified to perform. MDOT reserves the right to change a certification classification or description if there is a factual basis in the record.

Certification – Other Rules

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. MDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

MDOT will evaluate the eligibility of a firm on the basis of present circumstances and not based solely on historical information indicating a lack of ownership or control of the firm by socially and economically individuals at some time in the past, if the firm currently meets the ownership and control standards of the regulations.

Only those firms certified prior to the MDOT Construction Letting or Request for Proposal can be used to meet a goal on projects let in that perspective month.

XXIV. Unified Certification Program (UCP) (§§26.81 – 26.88)

Interstate Certification (§26.85)

To comply with new interstate certification rules effective January 1, 2012, MDOT will process out of state firms within 60 days of receipt of a complete application packet.

MDOT has developed an affidavit that affirms that the applicant has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of information required by §26.85 (c)(1), is an identical copy of the information submitted to their home state. This must be an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration

executed under penalty of perjury of the laws of the United States.

MDOT will then review to determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your state. Reasons for making such determination may include the following:

- Evidence that State A's certification was obtained by fraud;
- New information, not available to State A at the time of its certification, showing that the firm does not meet the eligibility criteria;
- State A's certification was factually erroneous or was inconsistent with the requirements of this part;
- The State law of State B requires a result different from that of the State law of State A.
- The information provided by the applicant firm did not meet the requirements of §26.85 (c).

If MDOT determines that there is good cause to believe that State A's certification is erroneous or should not apply in Mississippi, we will provide the firm a detailed letter stating the reasons for the determination. This letter will also give the firm an opportunity to respond to the determination either in person in a meeting or in writing. The applicant would still bear the burden of proof. MDOT will provide a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker. If the firm is still found to be ineligible, the firm may appeal to USDOT. All other applicable interstate certification rules still apply.

With regard to professional licenses, Mississippi law may require a different result than State A. 26.71(h) states, "If state or local law requires the person to have a particular license or other credentials in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and/or control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you must take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm."

Mississippi law requires a firm providing engineering services in the state to obtain a Certification of Authorization. It further states in part, that in order to qualify the firm must designate at least one Mississippi Licensed Professional Engineer, principal officer, partner, or designated engineer. That person must have management responsibilities for the firm's practice and make the significant technical and/or contractual judgments on behalf of the firm. Having anyone else other than the DBE owner be the qualifier for this Certificate of Authorization would not meet the control requirements of the Department's regulation.

Denial of Certification (§26.86)

For firms seeking initial certification with MDOT that the UCP Certification Committee has determined does not meet the requirements of the program pursuant to CFR 49 parts 26.61 and 63, 26.65, 26.67, 26.71 with regard to membership in a protected group, small

business size, social and economic disadvantage, ownership and control; will be provided a detail written notice of reasons for determination.

Any in-state firm may appeal an initial certification decision matter directly to USDOT. Such appeals may be sent to:

Department of Transportation
External Policy and Program Development Division
1200 New Jersey Avenue, S.E., Room W35304
Washington, DC 20590

The firm has 90 days from receipt of a denial letter to file your appeal. Effective October 1, 2018 USDOT Office of Civil Rights no longer accepts paper records in DBE appeal matters. Appeal files should be submitted in flash format, with a short (paper or email) cover letter. The cover letter should provide contact information, certifier name, and date of the denial or decertification. The required statement of 26.89(c) appeals grounds, decision letter, and all supporting materials should be on the flash drive.

When a firm is denied certification or the firm's eligibility is removed, that firm must wait twelve months before it is eligible to reapply for certification. This twelve-month period commences on the date of the denial letter or the removal of eligibility letter.

An applicant who appeals the denial of its application for certification to USDOT is not prohibited from reapplying at the end of the 12-month period if the appeal has not been decided.

Certification Removal (§26.87)

In the event MDOT proposes to remove a DBE's certification, the procedures will be consistent with §26.87.

When a firm is denied certification or the firm's eligibility is removed, that firm must wait twelve months before it is eligible to reapply for certification. This twelve-month period commences on the date of the denial letter or the removal of eligibility letter.

An applicant who appeals the denial of its application for certification to USDOT is not prohibited from reapplying at the end of the 12-month period if the appeal has not been decided.

Those firms who are currently certified in Mississippi whose eligibility is being challenged and proposed to be removed, will need to request a hearing (either in person or via teleconference) or provide rebuttal information in writing to MDOT within 30 days of receiving the proposed notice to remove eligibility.

All information received in response to the removal of certification along with the complete file that led to the hearing will be reviewed by an appeals committee, consisting of a minimum of three individuals not previously involved in the firm's certification process and who are knowledgeable of the DBE Program and 49 CFR Part 26.

A staff attorney will serve as chair of the appeals committee and conduct the meeting. The Civil Rights Director and the DBE Coordinator will be available to represent MDOT and answer any questions the committee may have. In cases where the firm elects to provide written rebuttal information in lieu of a face-to-face hearing; they should make themselves available by telephone should the committee have any additional questions.

A record of the appeals meeting will kept and made a part of the official record. This record along with the complete file of the firm will serve as the complete record of the appeals hearing and shall be made available to USDOT upon further appeal. MDOT reserves the right in some cases due to the complexity of the issues to hire a court reporter for appeal proceedings.

If after this process, the firm still believes that they meet the requirements of the DBE Program as outlined in 49 CFR Part 26, they may appeal to USDOT at the address below:

Department of Transportation
External Policy and Program Development Division
1200 New Jersey Avenue, S.E., Room W35304
Washington, DC 20590

The firm has 90 days from receipt of a denial letter to file your appeal. Effective October 1, 2018 USDOT Office of Civil Rights no longer accepts paper records in DBE appeal matters. Appeal files should be submitted in flash format, with a short (paper or email) cover letter. The cover letter should provide contact information, certifier name, and date of the denial or decertification. The required statement of 26.89(c) appeals grounds, decision letter, and all supporting materials should be on the flash drive.

A DBE that is suspended or debarred based on Federal, State, or local criminal indictment or conviction, or based on agency fact based proceedings, for conduct related to the DBE Program will automatically be removed from the program. This conduct is defined as when the DBE or its owners are indicted or convicted for perpetrating a fraud on the program related to the eligibility of the firm to be certified or fraud associated with the use of the DBE as a pass through or front company. Under these circumstances, MDOT is not required to initiate a separate decertification proceeding as outlined in 49 CFR Part 26.87.

Summary Suspension (§26.88)

A DBEs certification will be suspended without a hearing for 30 days if the recipient has evidence that the disadvantaged owner(s) has died or is incarcerated. At the discretion of the recipient, evidence of other material changes affecting the certification eligibility of the DBE also may result in summary suspension. The Office of Civil Rights will inform the firm of their suspension within 5 business days of the suspension. During this 30 day period, the will be asked to provide any rebuttal information to support the firms continued eligibility in the program. If no rebuttal information is received, MDOT will begin the process to remove certification. The firm will remain suspended during the certification removal process. The sooner the evidence of continued eligibility is provided by the DBE, the shorter the period of suspension if MDOT agrees that the firm remains eligible.

While suspended, the DBE firm may not be counted toward contract goals on new contracts executed after the suspension but can continue to perform and be counted on contracts and/or subcontracts signed prior to the suspension.

XXV. Confidentiality (§26.109)

MDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

State laws that address the disclosure of public information to third parties are Mississippi Code Section 25-61-5. Public Access to Records; Denials, governs the disclosure of public information by governmental entities in the State of Mississippi and Mississippi Code Section 25-61-9. Records furnished by Third Parties, which addresses the disclosure of public records that contain trade secrets or confidential commercial or financial information.

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter, as required by the June 28, 1999, Technical Amendment to 49 C.F.R. Part 26.

APPENDIX A

DEFINITIONS

DEFINITIONS

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

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

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

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

Compliance -- That a recipient has correctly implemented the requirements of this part.

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

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

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

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

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

Disadvantaged Business Enterprise or DBE -- A for-profit small business concern—
(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract -- Any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good Faith Efforts (GFE) -- Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state -- The state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member -- Father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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

Joint venture -- An association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

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

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

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

Noncompliance -- That a recipient has not correctly implemented the requirements of this part.

Notice to Bidders (NTB) -- A notice included in the bidding documents that informs prospective bidders of the bidding procedures and the opportunity to submit a bid.

Office of Civil Rights (OCR) – The Mississippi Department of Transportation division office responsible for administering the civil rights functions of the agency which includes the DBE Program.

OCR-481 Form – Must be submitted by the Prime Contractor within 3 business days of opening of bids. This form contains the commitments made to the DBE firms.

OCR-482 Form -- The Prime Contractor submits form to Project Engineer at the conclusion of project to verify quantities and to certify payments made to each DBE Contractor/Supplier to satisfy the contract goal.

OCR-483 Form -- The Commercially Useful Function (CUF) Performance Report/Written Certification of DBE Participation that is completed by the Project Engineer/Inspector.

OCR-484 Form -- The Prime Contractor submits to the Project Engineer certifying all payments to subcontractors.

OCR-485 Form -- All Contractors submit to Contract Administration Division with bid package which tracks the subcontractor firms who have submitted quotes for materials supplies or items to be subcontracted.

OCR-487 Form -- Only used by Prime Contractors that are certified as DBE firms to capture items of work subcontracted out to Non-DBE firms.

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

Personal net worth (PNW) -- The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification -- The most current *North American Industry Classification System (NAICS)* designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

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

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

Professional, Professional Consultant or Consultant -- A non-bid professional who provides contractual services such as engineering, architectural, management, construction inspection, surveying or other services.

Program -- Any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program -- Is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program -- Is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient -- Is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary -- The Secretary of Transportation or his/her designee.

Set-aside -- A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA -- The United States Small Business Administration. SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern -- With respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual -- Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

Black Americans -- Includes persons having origins in any of the Black racial groups of Africa.

Hispanic Americans -- Includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race.

Native Americans -- Includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians.

Asian-Pacific Americans -- Includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong.

Subcontinent Asian Americans -- Includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.

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

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

Tribally-owned concern -- Any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unified Certification Program (UCP) -- Provides “one-stop shopping” for firms seeking certification as a Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26 within each state.

APPENDIX B

MDOT'S SMALL BUSINESS CONCERN PROGRAM

Overview

As a recipient of federal funds the Mississippi Department of Transportation (MDOT) is required to have a Disadvantaged Business Enterprise (DBE) program. The DBE program is designed to ensure non-discrimination, create a level playing field, and remove barriers in US Department of Transportation (USDOT) – assisted contracts for socially and economically disadvantaged minority and female owned businesses. A Final Rule was issued by the USDOT that requires all state department of transportation's including MDOT to add an additional component to its DBE program to foster small business by February 28, 2012.

MDOT's Office of Civil Rights will be responsible for the development, implementation, and tracking of the Small Business Concern (SBC) program to comply with this Final Rule. This program will greatly impact both existing DBE firms and prime contractors. In essence a DBE is a small business; however, the program has created additional opportunities for larger non-disadvantaged firms to participate.

Proposal

In collaboration with the Executive Director of the Department of Transportation, Director of the Office of Civil Rights, and both internal and external customers it was decided the best approach to meet the mandated requirement of the Small Business Concern program would be to have set-aside projects. Projects meeting certain criteria would be set-aside and only small businesses would have the opportunity to bid.

We analyzed historical data to aid in the determination of what size projects would be used for the program as shown in Appendix A-B. We determined that Federal Fiscal Year (FFY) 2010 the average construction project awarded was \$4,715,141.00. Twenty-nine percent (29%) of the awarded projects were below one million dollars and forty-nine percent (49%) were below two million dollars. We also looked at the same data for FFY 2011. In FFY 2011 the average awarded project was \$5,875,941.00 with twenty- one percent (21%) of the projects below one million dollars and forty-three percent (43%) below two million dollars. We also looked at the annual gross receipt for the contractors that bid on projects in FFY 2010 and 2011(Appendix C-D). Using the data it was determined that any construction project estimated to be one million dollars or below will be considered to be set-aside for the Small Business Concern program. It was also determined any Consultant/Design project below one hundred –thousand dollars (\$100,000) would be considered for the Small Business set-aside program. The reason for this amount is because Design/Consultant projects are normally around ten percent (10%) of the construction cost. There are additional factors that will be considered before a project is set-aside for the SBC program. These factors include but are not limited to the location of the project and number of firms available that perform the scope of work involved in the project. MDOT has set a goal to have five set aside project the first full FFY after FHWA approval of the SBC program.

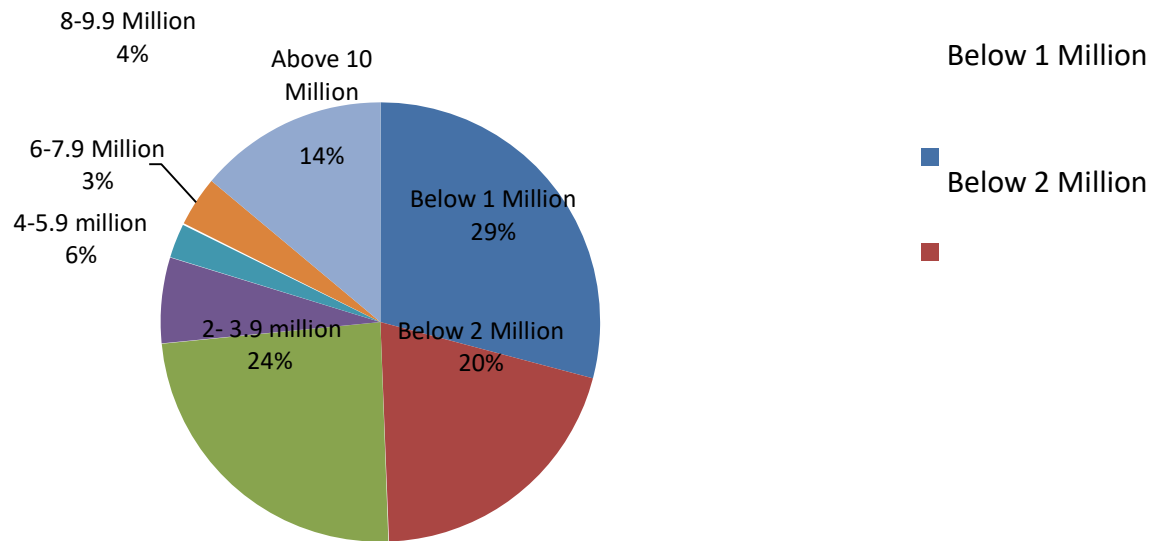
In order for a firm to bid on a Small Business Concern set-aside project the firm must submit an application and the firm's tax returns for the past three years. We have created a Small Business Concern Program Application to be used by the firms seeking certification shown in Appendix E. All certified DBE firms will automatically receive SBC status. The certified DBE firms are required to submit annually the firm's tax return therefore the Office of

Civil Rights has already verified their gross receipts to insure the firm is in compliance with the small business standards as set by SBA.

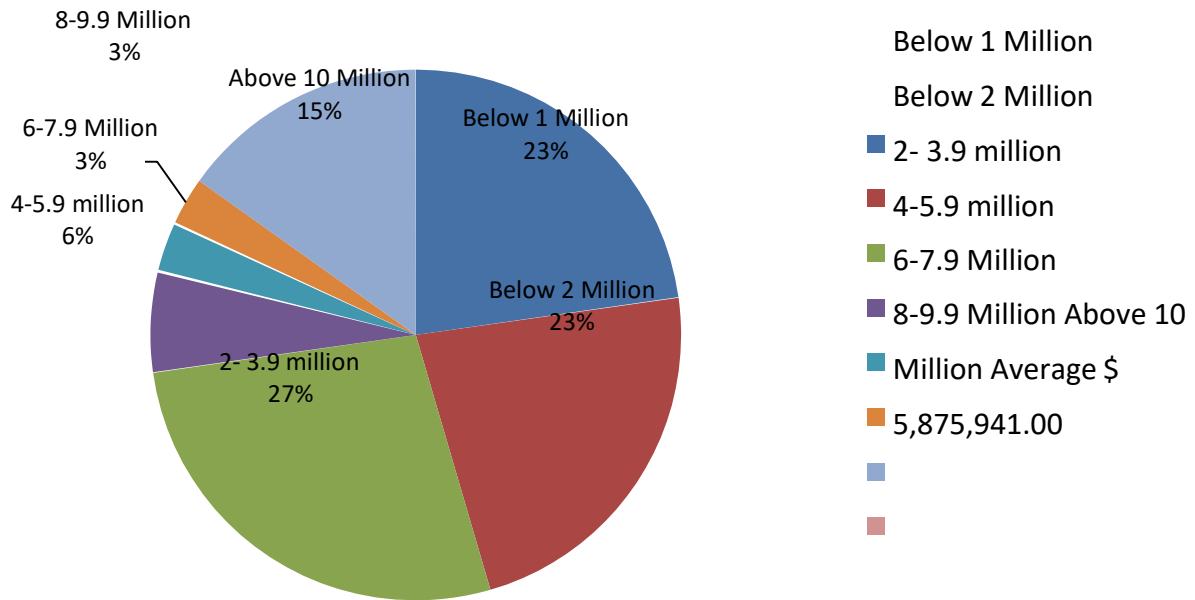
In order to comply with the federal mandate we also created a database for the Small Business Concern firms and will use our current DBE software to track Small Business Concern projects. MDOT's Consultant Services Division will also receive Small Business Concern applications but MDOT's Office of Civil Rights is responsible for processing the applications and the maintenance of the database.

The Office of Civil Rights has worked with the internal and external customers that are affected by this new component to the DBE program to ensure a smooth transition in the implementation of a Small Business Concern program (SBC).

2010 Awarded Projects



2011 Awarded Projects

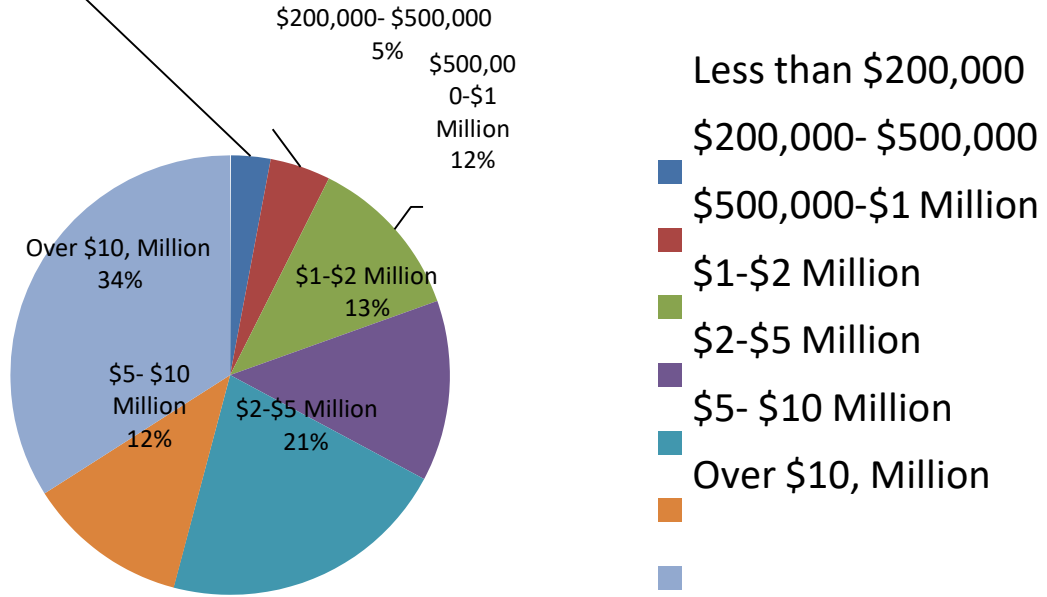


2010 Bidder's Registration

Less than
\$200,000
3%

Information

Annual Gross Receipts



2011 Bidder's Registration

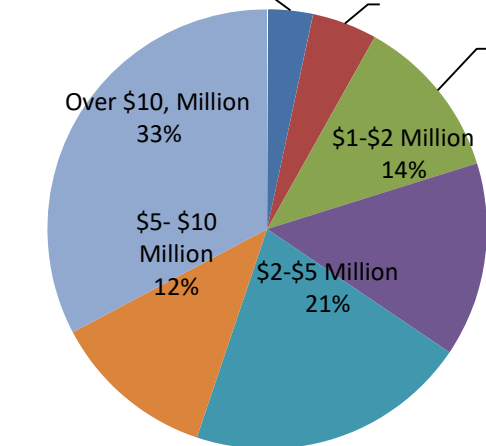
Information

Annual Gross Receipts

Less than
\$200,000
3%

\$200,000- \$500,000
5%

\$500,000-\$1
Million
12%



Less than \$200,000

\$200,000- \$500,000

\$500,000-\$1 Million

\$1-\$2 Million

\$2-\$5 Million

\$5- \$10 Million

Over \$10, Million



SMALL BUSINESS CONCERN PROGRAM APPLICATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:		(5) Fax #:		
(6) E-mail:		(7) Website (if have one):			
(8) Street address of firm (No P.O. Box):		City:	County/Parish:	State:	Zip:
(9) Mailing address of firm (if different):		City:	County/Parish:	State:	Zip:

B. Owner Information

(1) Name:		(2) Title:		(3) Home Phone #:	
(4) Home Address (street and number):		City:	State:	Zip:	
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		(6) Ethnic group membership (Check all that apply):			
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Black	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Subcontinent Asian		
		<input type="checkbox"/> Caucasian	<input type="checkbox"/> Other (specify) _____		

C. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ___/___/___		(4) I/We have owned this firm since: ___/___/___	
(5) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	
(6) Type of firm (check all that apply):			
<input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____			
(7) Number of employees: Full-time		Part-time	Total
_____		_____	_____
_____		_____	_____
_____		_____	_____

(8) Specify the gross receipts of the firm for the last 3 years: Year Total receipts \$
Year Total receipts \$
Year Total receipts \$

*** In order to complete your Small Business Concern Certification you must attach your firm's tax returns (gross receipts) and all related schedules for the past three years.**

D. List current licenses/permits held by any owner and /or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):

<i>Name of License/Permit Holder</i>	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

E. Prior/Other Certifications

Is your firm currently DBE Certified?	Yes	No	If yes, name certifying agency below:
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MAIL TO:
 Mississippi Department of Transportation
 Office of Civil Rights – DBE Liaison P.O.
 Box 1850
 Jackson, MS 39215-1850
 Phone: (601) 359-7466 Fax: (601) 576-4504
www.goMDOT.com

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM 49 C.F.R. PART 26

<p>Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.</p>

MISSISSIPPI DEPARTMENT OF TRANSPORTATION

SECTION 904 - NOTICE TO BIDDERS NO. 2611

CODE: (IS)

DATE: 05/21/2020

SUBJECT: Disadvantaged Business Enterprises In Federal-Aid Highway Construction

This contract is subject to the "Moving Ahead for Progress in the 21st Century Act (MAP-21)" and applicable requirements of "Title 49, Code of Federal Regulations, Part 26." Portions of the Act are set forth in this Notice as applicable to compliance by the Contractor and all of the Act, and the MDOT DBE Program, is incorporated by reference herein.

The Department has developed a Disadvantaged Business Enterprise Program that is applicable to this contract and is made a part thereof by reference.

Copies of the program may be obtained from:

Office of Civil Rights
Mississippi Department of Transportation
P. O. Box 1850
Jackson, Mississippi 39215-1850

POLICY

It is the policy of the Mississippi Department of Transportation to provide a level playing field, to foster equal opportunity in all federally assisted contracts, to improve the flexibility of the DBE Program, to reduce the burdens on small businesses, and to achieve that amount of participation that would be obtained in a non-discriminatory market place. In doing so, it is the policy of MDOT that there will be no discrimination in the award and performance of federally assisted contracts on the basis of race, color, sex, or national origin.

ASSURANCES THAT CONTRACTORS MUST TAKE

MDOT will require that each contract which MDOT signs with a sub-recipient or a Contractor, and each subcontract the Prime Contractor signs with a Subcontractor, includes the following assurances:

“The Contractor, sub-recipient or Subcontractor shall not discriminate on the basis of race, color, sex, or national origin in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MDOT deems appropriate.”

DEFINITIONS

For purposes of this provision the following definitions will apply:

"Disadvantaged Business" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individual(s) or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individual(s); and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individual(s) who own it. It is important to note that the business owners themselves must control the

operations of the business. Absentee ownership or title ownership by an individual who does not take an active role in controlling the business is not consistent with eligibility as a DBE under 49 CFR Part 26.71.

CONTRACTOR'S OBLIGATION

The Contractor and all Subcontractors shall take all necessary and reasonable steps to ensure that DBE firms can compete for and participate in the performance of a portion of the work in this contract and shall not discriminate on the basis of race, color, sex, or national origin. Failure on the part of the Contractor to carry out the DBE requirements of this contract constitutes a breach of contract and after proper notification the Department may terminate the contract or take other appropriate action as determined by the Department.

When a contract has a zero percent (0%) DBE goal, the Contractor still has the responsibility to take all necessary and reasonable steps to ensure that DBE firms can compete for and participate in the performance of the work in the contract. In this case, all work performed by a certified DBE firm is considered to be a "race neutral" measure and the Department will receive DBE credit towards the overall State goals when the DBE firm is paid for their work. If the Prime Contractor is a certified DBE firm, the Department can receive DBE credit only for the work performed by the Prime Contractor's work force or any work subcontracted to another DBE firm. Work performance by a non-DBE Subcontractor is not eligible for DBE credit.

CONTRACT GOAL

The goal for participation by DBEs is established for this contract in the attached Supplement. The Contractor shall exercise all necessary and reasonable steps to ensure that participation is equal to or exceeds the contract goal.

If the percentage of the contract that is proposed for DBEs is 1% or greater, the Contractor shall agree to meet or exceed the contract goal on the last bid sheet of the proposal.

All Bidders shall submit to the Office of Civil Rights Form OCR-481, signed by the Prime Contractor and the DBE Subcontractors, no later than the 3rd business day after opening of the bids.

Form OCR-481 is available on the MDOT website at www.mdot.ms.gov under the Civil Rights tab, or by calling 601-359-7466.

The OCR-481 Form must contain the following information:

The name and address of each certified DBE Contractor / Supplier;

The Reference Number, percent of work to be completed by the DBE subcontractor and the dollar amount of each item. If a portion of an item is subcontracted, a breakdown of that item including quantities and unit price must be attached, detailing what part of the item the DBE firm is to perform and who will perform the remainder of the item.

If the DBE Commitment shown on the last bid sheet of the proposal, does not equal or exceed the contract goal, the bidder must submit, to MDOT Contract Administration Division prior to bid opening, information to satisfy the Department that adequate good faith efforts have been made to meet the contract goal.

Failure of the lowest bidder to furnish acceptable proof of good faith efforts, submitted to MDOT Contract Administration Division prior to bid opening, shall be just cause for rejection of the proposal. Award may then be made to the next lowest responsive bidder or the project may be re-advertised.

GOOD FAITH EFFORTS

The following factors are illustrative of matters the Department will consider in judging whether or not the bidder has made adequate good faith effort to satisfy the contract goal.

- (1) Whether the bidder attended the pre-bid meeting that was scheduled by the Department to inform DBEs of subcontracting opportunities;
- (2) Whether the bidder advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
- (3) Whether the bidder provided written notice to a reasonable number of specific DBEs that their interest in the contract is being solicited;
- (4) Whether the bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether they were interested;
- (5) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the contract goal;
- (6) Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- (7) Whether the bidder negotiated in good faith with interested DBEs and did not reject them as unqualified without sound reasons based on a thorough investigation of their capabilities; and
- (8) Whether the bidder made efforts to assist interested DBEs in obtaining any required bonding or insurance.
- (9) Whether the bidder has written notification to certified DBE Contractors soliciting subcontracting for items of work in the contract.
- (10) Whether the bidder has a statement of why an agreement was not reached.
- (11) Proof of written notification to certified DBE Contractors by certified mail that their interest is solicited in subcontracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.

The bidder's execution of the signature portion of the proposal shall constitute execution of the following assurance:

The bidder hereby gives assurance pursuant to the applicable requirements of "Moving Ahead for Progress in the 21st Century Act (MAP-21)" and applicable requirements of "Title 49, Code of Federal Regulations, Part 26" that the bidder has made a good faith effort to meet the contract goal for DBE participation for which this proposal is submitted.

DIRECTORY

A list of "Certified DBE Contractors" which have been certified as such by the Mississippi Department of Transportation and other Unified Certification Partners (UPC) can be found on the Mississippi Department of Transportation website at www.mdot.ms.gov. The list is in the top left corner of the current Letting Calendar under Contracts & Letting. The DBE firm must be certified at the time the project is let and approved by MDOT to count towards meeting the DBE goal.

REPLACEMENT

If a DBE Subcontractor cannot perform satisfactorily, and this causes the OCR-481 commitment to fall below the contract goal, the Contractor shall take all necessary reasonable steps to replace the DBE with another certified DBE Subcontractor or submit information to satisfy the Mississippi Department of Transportation that adequate good faith efforts have been made to replace the DBE. The good faith efforts outlined previously in this document still apply. The replacement DBE must be a DBE who was on the Department's list of "Certified DBE Contractors" when the job was let, and who is still active. All DBE replacements must be approved by the Department.

Under no circumstances shall the Prime or any Subcontractor perform the DBE's work (as shown on the OCR-481) without prior written approval from the Department. See "Sanctions" at the end of this document for penalties for performing DBE's work.

When a Contractor proposes to substitute/replace/terminate a DBE that was originally named on the OCR-481, the Contractor must obtain a release, in writing, from the named DBE explaining why the DBE Subcontractor cannot perform the work. A copy of the original DBE's release must be attached to the Contractor's written request to substitute/replace/terminate along with appropriate Subcontract Forms for the substitute/replacement/terminated Subcontractor, all of which must be submitted to the DBE Coordinator and approved, in advance, by MDOT.

PRE-BID MEETING

A pre-bid meeting will be held in the Commission Room on the 1st Floor of the MDOT Administration Building in Jackson, at 2:00 P.M. on the day preceding the date of the bid opening.

This meeting is to inform DBE firms of subcontracting and material supply opportunities. Attendance at this meeting is considered of prime importance in demonstrating good faith effort to meet the contract goal.

PARTICIPATION / DBE CREDIT

Participation shall be counted toward meeting the goal in this contract as follows:

- (1) If the Prime Contractor is a certified DBE firm, only the value of the work actually performed by the DBE Prime can be counted towards the project goal, along with any work subcontracted to a certified DBE firm.
- (2) If the Contractor is not a DBE, the work subcontracted to a certified DBE Contractor will be counted toward the goal.
- (3) The Contractor may count toward the goal a portion of the total dollar value of a contract with a joint venture eligible under the standards of this provision equal to the percentage of the DBE partner in the joint venture.
- (4) Expenditures to DBEs that perform a commercially useful function may be counted toward the goal. A business is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work and carries out its responsibilities by actually performing, managing, and supervising the work involved.
- (5) The Contractor may count 100% of the expenditures for materials and supplies obtained from certified DBE suppliers and manufacturers that produce goods from raw materials or substantially alters them for resale provided the suppliers and manufacturers assume the actual and contractual responsibility for the provision of the materials and supplies. The Contractor may count sixty percent (60%) of the expenditures to suppliers that are not manufacturers, provided the supplier performs a commercially useful function in the supply process. Within 30 days after receipt of the materials, the Contractor shall furnish to the DBE Coordinator invoices from the certified supplier to verify the DBE goal.

- (6) Any work that a certified DBE firm subcontracts or sub-subcontracts to a non-DBE firm will not count towards the DBE goal.
- (7) Only the dollars actually paid to the DBE firm may be counted towards the DBE goal. The participation of a DBE Firm cannot be counted towards the Prime Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

AWARD

Award of this contract to the low bidder will be contingent upon the following conditions:

- (1) Concurrence from Federal Highway Administration, when applicable.
- (2) All Bidders must submit to the Office of Civil Rights for approval, Form OCR-481 (DBE Commitment) no later than the 3rd business day after opening of the bids to satisfy the Department and that adequate good faith efforts have been made to meet the contract goal. For answers to questions regarding Form OCR-481, contact the MDOT Office of Civil Rights at (601) 359-7466.
- (3) Bidder must include OCR-485 information with their bid proposal listing all firms that submitted quotes for material supplies or items to be subcontracted. OCR-485 information must be signed and included with the bid proposal. If the OCR-485 information is not included as part of bid proposal, your bid will be deemed irregular.

Prior to the start of any work, the bidder must notify the Project Engineer, in writing, of the name of the designated "DBE Liaison Officer" for this project. This notification must be posted on the bulletin board at the project site.

DEFAULT

If the contract goal established by MDOT in this proposal is 1% or greater, it must be met to fulfill the terms of the contract. The Contractor may list DBE Subcontractors and items that exceed MDOT's contract goal, but should unforeseen problems arise that would prevent a DBE from completing its total commitment percentage, the Contractor will meet the terms of the contract as long as it meets or exceeds MDOT's Contract Goal. For additional information, refer to "Replacement" section of this Notice.

DBE REPORTS

- (1) OCR-481: Refer to "CONTRACT GOAL" section of this Notice to Bidders for information regarding this form.
- (2) OCR-482: At the conclusion of the project, before the final estimate is paid and the project is closed out, the Prime Contractor will submit to the Project Engineer for verification of quantities and further handling Form OCR-482 whereby the Contractor certifies to the amounts of payments made to all Contractors / Suppliers over the life of the contract. The Project Engineer shall submit the completed Form OCR-482 to the DBE Coordinator (Office of Civil Rights). Final acceptance of the project is dependent upon Contract Administration Division's receipt of completed Form OCR-482 which they will receive from the Office of Civil Rights.
- (3) OCR-483: The Project Engineer/Inspector will complete Form OCR-483, the Commercially Useful Function (CUF) Performance Report, in accordance with MDOT S.O.P. No. OCR-03-05-02-483. Evaluations reported on this form are used to determine whether or not the DBE firm is performing a CUF. The Prime Contractor should take corrective action when the report contains any negative evaluations. DBE credit may be disallowed and/or other sanctions imposed if it is determined the DBE firm is not performing a CUF. This form should also be completed and returned to the DBE Coordinator (Office of Civil Rights).

- (4) OCR-484: Each month, the Prime Contractor will submit to the Project Engineer OCR-484 that certifies payments to all Subcontractors and shows all firms even if the Prime Contractor has paid no monies to the firm during that estimate period (negative report). The Project Engineer will attach the form to the monthly estimate before forwarding to the Contract Administration Division for further processing. Failure of the Contractor to submit the OCR-484 will result in the estimate not being processed and paid.
- (5) OCR-485: ALL BIDDERS must submit signed form with bid proposal of all firms that submitted quotes for material supplies or items to be subcontracted. If the OCR-485 information is not included as part of bid proposal, the bid will be deemed irregular.
- (6) OCR-487: Only used by Prime Contractors that are certified DBE firms. This form is used in determining the exact percentage of DBE credit for the specified project. The low Bidder should return this form to MDOT with the OCR-481 form, or can also be returned with the Permission to Subcontract Forms (CAD-720, CAD-725 and CAD-521).

DBE Forms, can be obtained from the Office of Civil Rights Division, MDOT Administration Building, 401 North West Street, Jackson, MS, or at www.mdot.ms.gov under the Civil Rights tab.

SANCTIONS

The Department has the option to enforce any of the following penalties for failure of the Prime Contractor to fulfill the DBE goal as stated on the OCR-481 form or any violations of the DBE program guidelines:

- (1) Disallow credit towards the DBE goal
- (2) Withhold progress estimate payments
- (3) Deduct from the final estimate or recover an amount equal to the unmet portion of the DBE goal which may include additional monetary penalties as outlined below based on the number of offenses and the severity of the violation as determined by MDOT.

1 st Offense	10% of unmet portion of goal	or	\$5,000 lump sum payment	or	Both
2 nd Offense	20% of unmet portion of goal	or	\$10,000 lump sum payment	or	Both
3 rd Offense	40% of unmet portion of goal	or	\$20,000 lump sum payment	or	\$20,000 lump sum payment and debarment

- (4) Debar the Contractor involved from bidding on MDOT federally funded projects for a period of up to 12 months after notification by certified email.

