

## **G. SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION BOARD OF DIRECTORS**

### **POLICY STATEMENT**

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The Suburban Mobility Authority for Regional Transportation Board of Directors has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (US DOT) 49 CFR Part 26. The Suburban Mobility Authority for Regional Transportation Board of Directors has received federal financial assistance from US DOT, and as a condition of receiving this assistance, the Suburban Mobility Authority for Regional Transportation Board of Directors has signed an assurance that it will comply with 49 CFR Part 26.

#### **Federal DBE Program Commitment**

It is the policy of the Suburban Mobility Authority for Regional Transportation Board of Directors to pursue the US DOT/FTA objectives of the DBE program found at 49 CFR Part 26, and, in accordance with U. S. Small Business Administration (SBA), Matched to North American Industry classification system codes (NAICS 2002) Effective October 1, 2002; and, The Michigan US DOT Recipients Memorandum of Understanding for the Unified Certification Program (MUCP), Effective FY-2003 (See MUCP Attachment); which are:

To ensure nondiscrimination in the award and administration of US DOT/FTA assisted Contracts in the Suburban Mobility Authority for Regional Transportation (SMART'S) transit financial assistance program; and

To create a level playing field on which DBEs can compete fairly for US DOT/FTA assisted contracts; and

To ensure that the SMART/DBE program is narrowly tailored in accordance with applicable law; and

To ensure that only firms that fully meet federal eligibility standards are permitted to participate as DBEs; and

To help remove barriers to the participation of DBEs in US DOT/FTA assisted contracts; and

To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

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

These policies shall be implemented by SMART as follows:

#### **Responsibilities**

The General Manager of the Suburban Mobility Authority for Regional Transportation shall be responsible for implementation of the DBE program. The General Manager has designated a DBE/EEO Program Manager to administer the program. The DBE Program Manager shall be responsible for administering all aspects of the DBE program at SMART. The DBE/EEO Manager and staff, supported by other internal departments, shall be responsible for developing, managing, and implementing the program on a day-to-day basis. The DBE Manager shall also be responsible for carrying out technical assistance activities, for disseminating information on available business opportunities so that DBEs are provided an opportunity to participate in the department's contracts, and for maintaining an accurate and up-to-date directory of DBEs certified at SMART.

### **Goals**

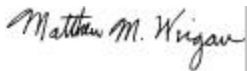
The DBE/EEO Manager shall annually recommend DBE goals to the SMART Board of Directors. Upon receiving the recommended goals, the Board of Directors shall establish those goals that they feel appropriate and required by federal and state law.

SMART will use race gender neutral and race gender conscious means to meet the recommended overall goal. SMART shall set one combined goal for DBEs where federal-aid funds are involved.

Contract goal(s) shall be set for specific US DOT/FTA-assisted construction, consulting, procurement, and service contracts or grants with subcontracting opportunities. Prospective recipients of SMART contracts must assure the Authority of their intent to meet the established goal(s) in order to be eligible for award.

SMART will not use quotas in any way in the administration of the DBE program. Adopted by the Suburban Mobility Authority for Regional Transportation Board of Directors.

### SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION



Matthew M. Wirgau  
Chairman, Board of Directors



Dan G. Dirks  
General Manager

**SUBURBAN MOBILITY AUTHORITY FOR REGIONAL TRANSPORTATION**

**RESOLUTION**

**Approval and Endorsement of SMART's Revised Disadvantaged Business Enterprises Program/Plan**

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- Whereas,** The Suburban Mobility Authority for Regional Transportation (SMART), recognizes its moral responsibility not to discriminate against any of its employees or applicants for employment on the basis of race, color, sex, age, handicap, religion, ancestry, marital status, national origin, place of birth or sexual preference in regards to hiring, recruiting, salaries, promotions, transfers, terminations, and other conditions of employment and;
- Whereas,** The U.S. Department of Transportation and the State of Michigan also require the development of an Affirmative Action Program/Plan; and
- Whereas,** SMART has revised its present Disadvantaged Business Enterprises Program/Plan in accordance with the revised U.S. DOT Regulations relative to its final rule, 49 CFR Part 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs" opportunity; now therefore be it
- Resolved,** That the Board of Directors of the Suburban Mobility Authority for Regional Transportation (SMART) approve the SMART Affirmative Action Program/Plan and authorize its submission to the Federal Transit Administration (FTA) for final approval.

CERTIFICATE

The undersigned duly qualified Board Secretary of the Suburban Mobility Authority for Regional Transportation certifies the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the Board of Directors of the Suburban Mobility Authority for Regional Transportation held on February 20, 2003.

03/27/03

Date



Board Secretary

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## PROGRAM AUTHORITY

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### **DBE Program**

The US DOT on February 2, 1999 published in the ***Federal Register*** its final rule, 49 CFR part 26, entitled “***Participation by Disadvantaged Business Enterprises in Department of Transportation Programs***”. This final rule became effective on March 4, 1999. It superseded all DBE, regulations, orders, circulars and administrative requirements concerning financial assistance programs issued by US DOT before March 4, 1999. This rule required SMART to implement program to encourage the participation of DBEs in its federal-aid contracting activities.

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

In addition to procedures outlined in this program SMART will adhere to all current federal and state laws, regulations, Executive Orders concerning the DBE program and shall continue to do so, subject to the availability of federal and state funds.

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## **A. DEFINITIONS**

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**FOR THE PURPOSE OF THIS PROGRAM, THESE DEFINITIONS WILL APPLY.**

### **ADMINISTRATOR**

**MEANS THE DESIGNATED PERSON IN CHARGE OF SMART'S OFFICE OF DBE/EEO PROGRAMS.**

### **AFFILIATION**

**HAS THE SAME MEANING THE TEAM HAS IN THE SMALL BUSINESS ADMINISTRATION (SBA) REGULATIONS, 13 CFR PART 121.**

- (1) EXCEPT AS OTHERWISE PROVIDED IN 13 CFR PART 121, CONCERNS ARE AFFILIATES OF EACH OTHER WHEN, EITHER DIRECTLY OR INDIRECTLY:**
- (I) ONE CONCERN CONTROLS OR HAS THE POWER TO CONTROL THE OTHER; OR**
  - (II) A THIRD PARTY OR PARTIES CONTROLS OR HAS THE POWER TO CONTROL BOTH; OR**
  - (III) AN IDENTITY OF INTEREST BETWEEN OR AMONG PARTIES EXISTS SUCH THAT AFFILIATION MAY BE FOUND.**

**(2) IN DETERMINING WHETHER AFFILIATION EXISTS, IT IS NECESSARY TO CONSIDER ALL APPROPRIATE FACTORS, INCLUDING COMMON OWNERSHIP, COMMON MANAGEMENT, AND CONTRACTUAL RELATIONSHIPS. AFFILIATES MUST**

**BE CONSIDERED TOGETHER IN DETERMINING WHETHER A CONCERN MEETS SMALL BUSINESS SIZE CRITERIA AND THE STATUTORY CAP ON THE PARTICIPATION OF FIRMS IN THE DBE PROGRAM.**

### **ALASKA NATIVE**

**MEANS 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)

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

### Appeals

Means a request for a hearing for denial or removal before SMART's Office of the Manager of Disadvantaged Business Enterprises/Equal Employment Opportunities Programs or his/her designee or a request for review by the U.S. Department of Transportation of SMART's denial or removal of certification of a DBE pursuant to the provisions of 49 CFR Part 26.83 or 49 CFR Part 26.85 (a) (b) or 49 CFR Part 26.89.

### Applicant

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

### Broker

See Definition of "Supplier".

### Certification Evaluation Committee (CEC)

Means that group which reviews all DBE applications to determine their eligibility to participate in the program.

## **Definitions**

### Commercially Useful Function (CUF)

Means a DBE is responsible for the execution of a distinct element of the work of a contract and carry out responsibilities by actually performing the work involved. To perform a commercially useful function, the DBE must also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. The DBE may also enter into subcontracts. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. If a DBE subcontracts a significantly greater portion of the work than would be expected on the basis of normal industry practice or exceeds subletting limitations in effect, the DBE shall be presumed to not be performing a commercially useful function may be credited to project and statewide goals.

### Compliance

Means that a recipient has correctly implemented the requirements of this part.

### Contract

Means a legally binding relationship or any modification thereof 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 these procedures, a lease is a contract.



#### Contractor/Subcontractor

Means one who participates, through a contract, grant or subcontract, in a project covered by this program, including consultants and lessees.

#### Disadvantaged Business Enterprise (DBE)

Means 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.

#### Authority or SMART

Means the Suburban Mobility Authority for Regional Transportation.

#### FTA-Assisted Contract

Means any contract between a recipient and a contractor (at any tier) funded in whole or in part with US DOT/FTA financial assistance.

#### Federal (US DOT/FTA) – DBE

DBE for the purpose of federal-aid contracts funded by U.S. Department of Transportation (US DOT) and the Federal Transit Administration (FTA) is a small business concern in which at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals who own it.

## Definitions

#### US DOT/FTA Region V Certification

Means any firm that meets the certification criteria for SMART may also request to be simultaneously certified with the other instate agencies. This certification is based upon a reciprocal agreement (MOU) developed by SMART, MDOT, DDOT, Wayne County, GRITR, MWCA, and DCA.

#### Field Monitoring/Job Site Investigations and Review

Means a job site Investigations and review of DBE or Primary Vendor firms participating on a project funded in some measure by federal funds, in accordance with 49 CFR Part 26.37.

#### Good faith efforts

Means 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.

#### Immediate family member

Means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe

Means 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

Means 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.

MODBE Administrator

Means Manager of the Office of Disadvantaged Business Enterprises.

Manufacturer

See definition of “Supplier”.

Mentor/Protégé

Means an arrangement established between a mentor and protégé where specified training is provided to the protégé by the mentor.

Native Hawaiian

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

## Definitions

Native Hawaiian Organization

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

Noncompliance

Means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA

Means the following part of US DOT: Federal Transit Administration (FTA). The “Administrator” of an operating administration includes designees.

ODBE/EEO

Means the Office of Disadvantaged Business Enterprises / Equal Employment Opportunities.

On-Site Review

Means an investigation that is conducted to determine the eligibility of DBE firms, in accordance with  
49 CFR Part 26.

#### Orientation

Means a session designed to familiarize newly certified DBE firms with program objectives, procedures, and supportive services programs.

#### Personal Net Worth

Means 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.

#### Prequalification

Is a process that may be used as an option soon by SMART to determine the work classifications a Contractor/Consultant is eligible to perform and the maximum contract amount which the Contractor's/Consultant's resources enable it to manage. Refer to Attachment F, page 86.

#### Primary Industry Classification

Means the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Small Business Administration (SBA) Classification Manual. As the North American Industrial Classification System (NAICS) Effective October 1, 2002 replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available at SBA/NAICS also makes materials available through its web site (<http://www.sba.gov/size>), and select "What's New," or contact the office of size standards by email at ([sizestandards@sba.gov](mailto:sizestandards@sba.gov)) or by phone at (202) 205-6618.

#### Primary Recipient

Means a recipient, which receives US DOT/FTA financial assistance and passes some or all of it on to another recipient.

## Definitions

#### Principal place of business

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

#### Program

Means any undertaking on a recipient's part to use US DOT/FTA financial assistance, authorized by the laws to which this part applies.

#### Race/gender conscious (RGC) measure or program

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

Race/gender neutral (RGN) 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 US DOT/FTA financial assistance is extended, whether directly or through another recipient, for any program.

Regular-Dealer

See definition of "Supplier".

Michigan US DOT Recipients Memorandum of Understanding for the Unified Certification Program (MUCP)

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

(See attached at rear of DBE manual).

Small Business Administration (SBA)

Means the United States Small Business Administration.

Small Business Concern

Means, with respect to firms seeking to participate as DBEs in US 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 Sec. 26.65(b).

Socially and Economically Disadvantaged Individual

Means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is –

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) Black Americans, "which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) Hispanic Americans, "which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central, or South American, or other Spanish or Portuguese culture or origin, regardless of race;

Definitions

- (iii) Native Americans, "which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) Subcontinent Asian Americans, "which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
- (vi) Women;

- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Supplier (see page 22 for info on counting supplier participation towards DBE goals)

There are three types of suppliers: manufacturers, regular dealers, and brokers.

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

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

A *broker* is a DBE, which is neither a manufacturer nor a regular dealer.

Tribally-owned concern

Means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Memorandum of Understanding

MOU means an agreement between transit agencies within the State of Michigan, who receive federal funding from US DOT, e.g., MDOT, FAA, FTA, FHWA, agencies, in accordance with 49 CFR Part 26.

MDOT

Means Michigan Department of Transportation.

SMART

Means Suburban Mobility Authority for Regional Transportation.

DDOT

Means Detroit Department of Transportation.

W/C

Means Wayne County.

MWCA

Means Metropolitan – Wayne County Airport.

DCA

Means Detroit City Airport.

The agencies listed above are primary and alternate members of the Michigan US DOT Recipients Unified Certification Program Committee, (MRUCPC).

### PROJECTS COVERED BY THIS PROGRAM

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Suburban Mobility Authority for Regional Transportation's (SMART) DBE program covers projects funded from the following sources of federal-aid, which are to be awarded or administered by the Office of DBE/EEO Programs:

- 
1. Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

# PROGRAM INFORMATION

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## Program Information

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For additional Program Information, call or write:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward, Suite 950  
Detroit, Michigan 48226  
Phone: (313) 223-2116 or (313) 223-2117 or (313) 223-2113  
Fax: (313) 223-2135**

## DBE Aspired Participation Goal

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SMART will publish a notice of the proposed overall DBE participation goal, informing the public that the proposed goal and its rationale are available for inspection.

## Complaint Procedure

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SMART recognizes its responsibility to render courteous and timely service to the public. Complaints regarding the DBE program should be forwarded to:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward, Suite 950  
Detroit, Michigan 48226**

1. The complaint must be submitted to the department, in writing, and must set forth facts and any supporting documents the complainant may have. Facts should be described in as much detail as possible.
2. The complainant must sign the complaint and give an address and telephone number where they may be reached during the investigation. Complainants identity may be kept confidential, if requested. Refer to 49 CFR 26.109 (b).
3. SMART will provide an initial response, in writing, to all complaints within 15 calendar days.

## ***Public Information Guidelines***

SMART's policy, in regard to information requests, is that all queries by the general public, contractors, news reporters, and attorneys should be responded to promptly and with candor in so far as the information sought is not protected from disclosure by statute.

Requests for public record shall be handled in accordance with the provisions of 1976 PA 442, MCL 15.231; MSA 4.1801 (1), as amended.

For a Freedom of Information request contact:

**Suburban Mobility Authority for Regional Transportation  
Attn: Office of the Manager DBE/EEO Programs  
First National Building  
660 Woodward Avenue, Suite 950  
Detroit, Michigan 48226  
Phone: (313) 223-2113**

### Reporting False, Fraudulent, or Dishonest Conduct

SMART will bring to the attention of MUCP, and/or US DOT any false, fraudulent, or dishonest conduct in connection with the program, so that US DOT can take the steps (e.g., referral to the SMART's Manager of DBE/EEO action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR 26.109. SMART may also pursue state, civil and/or criminal remedies.



**GOALS  
GOOD FAITH EFFORTS  
AND  
COUNTING**

## **Goals, Good Faith Efforts, and Counting**

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### Methodology for the Development of the Overall Goal for DBE Participation

Pursuant to the requirement of US DOT/FTA regulations at 49 CFR 26.45, SMART has developed a method to establish the overall goals for DBE participation where US DOT/FTA-assisted contracts are involved.

The Methodology describes the method used by SMART to forecast the level of DBE participation that can be achieved in the projected fiscal year program related to US DOT/FTA-assisted contract and subcontract opportunities which are financed in whole or in part with funds from the FTA.

Additionally, the methodology describes how portions of the forecasted overall goal are achieved by using race-neutral and race-conscious means.

Race/gender-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a primary contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

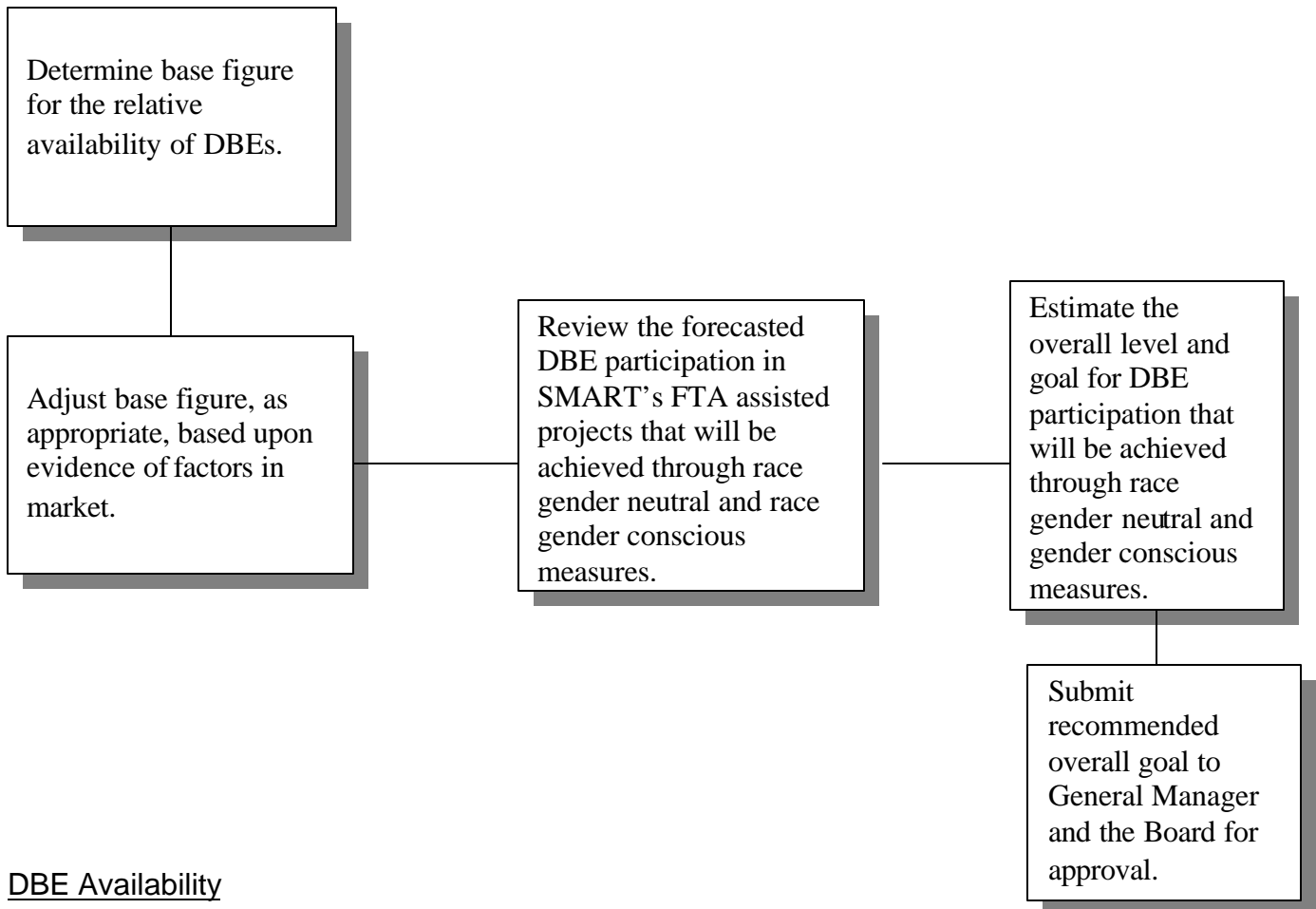
Race/gender-conscious DBE participation includes any time a DBE receives subcontracts from a prime contractor because of required DBE contract goals.

Rules and regulations explaining and detailing race-neutral and race-conscious measures to meet overall goals can be referenced at 49 CFR 26.5.

SMART considers the following factors in developing the overall goal:

1. The availability of DBEs in the marketplace.
2. A projection of the numbers and types of US DOT/FTA-assigned contracts to be awarded by SMART over the period during which the goals will be in effect.

SMART's method of determining the above factors related to establishing the overall goal for the projected fiscal year program is as follows.



### DBE Availability

The DBE availability factor is based on the calculated base figure for the relative availability of ready, willing and able DBEs relative to SMART's marketplace and the adjustments made to the base figure.

$$\text{Base figure (\%)} = \frac{\text{Number of SMART certified DBEs}}{\text{Number of SMART prequalified and certified DBE firms}}$$

Adjustment to the base figure will be based on appropriate factors in SMART's marketplace. Below is a list of factors that should be considered. They are not intended to be exclusive and exhaustive. Other factors may be relevant in appropriate cases.

- ? Past results of DBEs' bidding activity with SMART
- ? Past results of SMART's contract award activity with DBEs including the reasons for the high or low level of those results
- ? The number and type of DBEs likely to be available to compete for a mix of contracts
- ? An analysis of the classifications in which the certified DBEs have shown a preference to perform work compared to the types and dollar volume of work projected
- ? The current capacity of DBEs to compete for contracts, as measured by the volume of work DBEs have performed in the past
- ? The DBEs availability to get financing, bonding, and insurance to participate and compete for contracts
- ? Continuing efforts of discrimination as measured by the volume of work DBEs have performed on 100 percent state-funded projects

## II. Projection of Numbers and Types of US DOT/FTA-Assisted Contracts

### A. US DOT/FTA-Assisted Projects

This projection was developed by forecasting DBE participation through the use of race-neutral and race-conscious measures in US DOT/FTA-assisted projects and DBE participation in federally-funded projects and programs.

The work program to establish this factor has been completed by the department's Contract Evaluation Team. The team consists of representatives from various departments that have the expertise to examine and determine the feasibility and extent of DBE involvement through the use of race-neutral and race-conscious measures on approved projects.

The level of forecasted DBE participation in US DOT/FTA-assisted projects is based on the estimate of expenditures for the projected fiscal program as illustrated in the table below.

	Estimated Dollars (000)	Value (%)	Portions of Goal Achieved Through RGN And RGC Measures (%)
FY - Projects	\$XXXX	XX%	N/A
Projected DBE Participation in US DOT/FTA-Assisted Projects	\$XXXX	XX%	RGN – XX (%) RGC – XX (%)

### B. US DOT/FTA-Assisted Projects and Programs

SMART administers a number of other projects and programs, which are US DOT/FTA-Assisted. A projection of the numbers and types of these contracts, for the upcoming fiscal year, has been developed by each internal department, which administers such projects and programs funded by US DOT/FTA.

Projections of DBE participation are conducted through the use of race-neutral and race-conscious measures in contract opportunities contained in the estimated fiscal programs as illustrated in the table below.

SMART Departments	Estimated Dollars (000)	Projected DBE Participation (000)	DBE Participation Goal (%)	Portions of Goal Achieved Through RGN and RGC Measures (%)
XXXX Department	\$XXXX	\$XXXX	XX%	RGN – XX (%) RGC – XX (%)
XXXX Department	\$XXXX	\$XXXX	XX%	RGN – XX (%) RGC – XX (%)

C. Estimate of Overall Percentage Goal for DBE Participation

The forecast of the overall level of DBE participation is developed based upon the results of the application of the goal setting methodology as illustrated in the table below.

SMART's FTA-Assisted Contracts	Estimated Dollars (000)	Projected DBE Participation (000)	DBE Participation Goal (%)	Portions of Goal Achieved Through RGN and RGC Measures (%)
FY - FTA Projects	\$XXXX	\$XXXX	XX%	RGN – XX (%) RGC – XX (%)
Non-FTA Programs and Projects	\$XXXX	\$XXXX	XX%	RGN – XX (%) RGC – XX (%)
<b>TOTAL</b>	<b>\$XXXX</b>	<b>\$XXXX</b>	<b>XX% Overall Goal</b>	<b>RGN – XX (%) RGC – XX (%)</b>

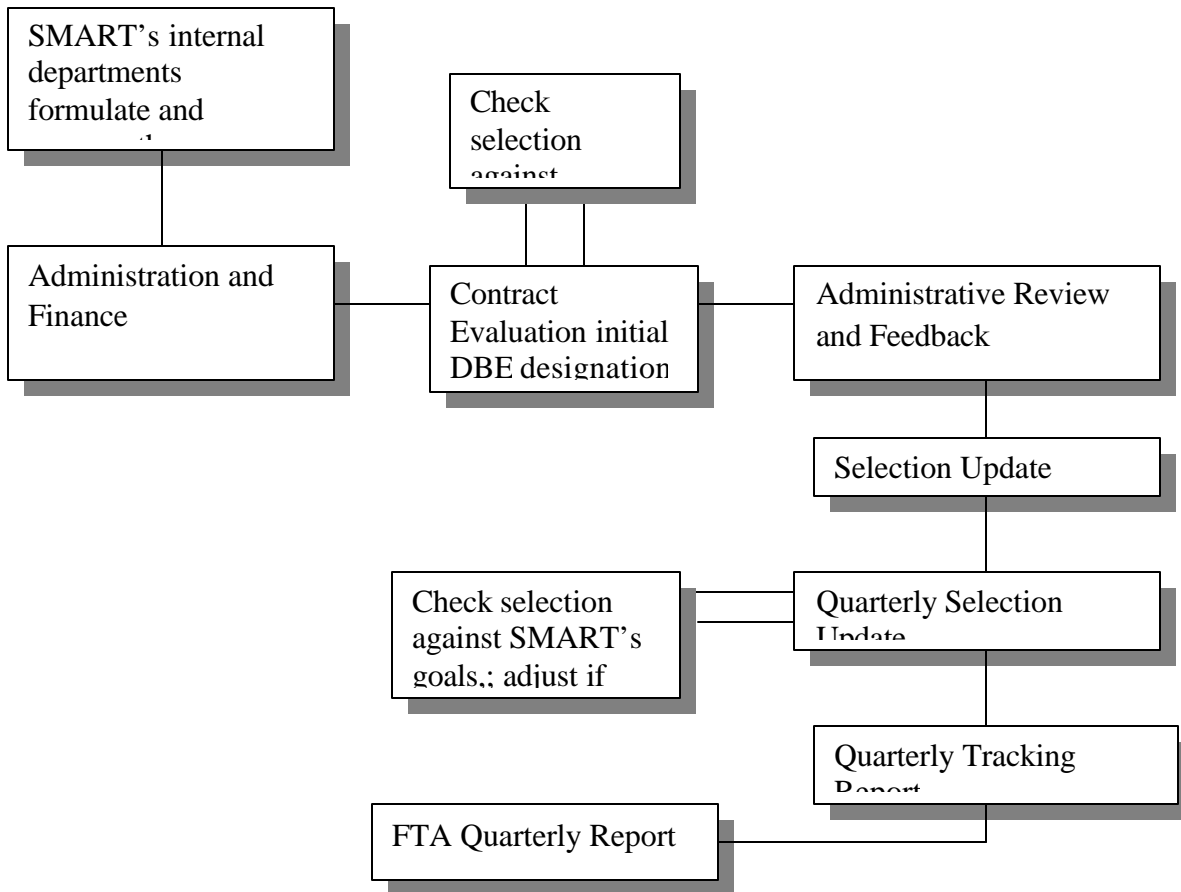
SMART's Methodology to Develop Overall DBE Goal-Narrative Description is widely distributed. Copies may be obtained from:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward Avenue, Suite 950  
Detroit, Michigan 48226**

## Contract Selection Process

SMART has established a contract selection process that ensures that certified firms are given contracting opportunities with the department. ODBE monitors and reports on the extent of participation by disadvantaged businesses.

A Contract Evaluation Committee (CEC) was developed to provide contracting opportunities in a wide variety of work classifications throughout the fiscal year on federally-assisted projects.



The CEC consists of representatives from the Office of DBE/EEO Programs and the General Managers Office, departments of Finance and Administration, and Transportation Planning. The Committee examines each of the approved projects and determines the level of DBE participation, based on the available information about each project.

The CEC bases its determinations on:

1. The work classifications involved in each project.
2. The capability and availability of DBE firms to bid on work involved in the project.
3. The Project Manager's estimated dollar value on the project.
4. An effort to distribute equitably among the affected groups and throughout work classifications.
5. An effort to meet or exceed the SMART's approved annual goal.
6. An effort to ensure quality performance on all of the SMART's projects.

A quorum is reached when a majority of the committee members are present. Recommendations of the CEC are determined by a simple majority of the members.

### **Contract Evaluation Committee**

The composition of the Contract Evaluation Committee is as follows:

Manager, Office of DBE/EEO Programs  
General Manager designee and the  
Directors of Finance, Administration and General Council or designees

Ex-Officio members from other areas of the Authority may be brought into this committee on an as-needed basis to enhance the team's ability to make more informed designations.

## **Requests for Waiver or Modification of DBE Participation Goals**

**Guidance for Contractors** – These are two circumstances in which requests for waiver or modification of the DBE participation requirement may arise. First, at the time of contract award, the apparent low bidder does not propose to meet the project goal and second, during the execution of the contract, the planned subcontracts to DBE firms do not materialize.

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

In order for SMART to evaluate the contractor's good faith efforts to meet the goal and to provide the basis for a determination on requests for waiver or modification, the Authority must have access to all of the facts necessary for the evaluation.

This guidance is intended to outline the minimum information and documentation SMART requires for consideration of requests for waiver or modification of the DBE participation goal. Each request for waiver or modification of the contract goal is considered on its own merits. Simply following the required steps and submitting a request in the prescribed format does not ensure that the request will be approved.

**Pre-Award Efforts** – Efforts should be intense, aggressive and sincere for the specific project and go beyond simple paperwork exercises. Efforts should include written communication, personal contact, follow-up, and where appropriate, earnest negotiation with DBEs.

The following is intended to provide contractors with guidance regarding the submission of requests for waiver or modification of the contract goal for DBE participation.

The steps which should be taken by the apparent low-bidder when submitting a Disadvantaged Business Enterprises (DBE) Participation Plan are contained in SMART's Special Provision For Subletting Contract Work to Disadvantaged Business Enterprises (DBE).

The requests for waiver or modification of the goal should include all information and documentation indicating why the contract goal should be waived, including evidence of the efforts the contractor has undertaken to meet the DBE participation goal.

Examples of information a contractor may supply include:

- A. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;
- B. Follow-up contacts confirming the interest of DBEs who were initially solicited;



- C. Selecting portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goal being achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation;
- D. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;
- E. Negotiating in good faith with interested DBEs. Evidence of such negotiations should include the names, addresses, and telephone numbers of DBEs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for DBEs to perform the work;
- F. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
- G. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by SMART or the contractor;
- H. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- I. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; bcal, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs; and
- J. Evidence of the contractor's record of exceeding DBE participation goals on prior projects.

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

## Post-Award Efforts

No changes to a contractor's approved DBE participation plan may be made without SMART's prior approval. SMART's Special Provision for Subletting Contract Work to Disadvantaged Business Enterprises, provides the following:

The ODBE shall be notified **IMMEDIATELY** of a DBE's inability to perform and the contractor's intent to obtain a substitute DBE. Contractors are required to make a good faith effort to replace a DBE, that is unable to perform, with another DBE. The substitute DBE must be approved by the department prior to starting work.

Post-Award efforts can be defined as efforts taken by the prime contractor to meet the DBE goal after the contract has been awarded and an approved DBE firm will not or cannot perform their work. Once the DBE participation is approved by SMART, DBE firms cannot be changed or replaced by non-DBE firms without:

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

If quantities for pay items, which are subcontracted to DBE firms, are decreased or completely deleted by the department, the prime should consider subcontracting other work to DBE firms to meet the DBE goal. All efforts to meet the DBE participation goal should be documented. On the date the contractor becomes aware that the DBE goal will not be met, the amount of contract work left at that point must be carefully reviewed to determine available work which may be subcontracted to DBE firms.

The contractor's efforts to meet the DBE participation goal should include evidence that the contractor has:

- A. Solicited, through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices), the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations;
- B. Followed up with contacts confirming the interest of DBEs who were initially solicited;
- C. Selected portions of the work to be performed by DBEs in order to increase the likelihood of the DBE goal being achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation;
- D. Provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation;
- E. Negotiated in good faith with interested DBEs. Evidence of such negotiations should include the names, addresses, and telephone numbers of DBEs that were considered, a description of the information provided regarding the plans and specifications for the work selected for subcontracting, and evidence as to why additional agreements could not be reached for DBEs to perform the work;

- F. Not rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;
- G. Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by SMART or the contractor;
- H. Made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
- I. Used the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs; and
- J. Provided evidence of the contractor's record of exceeding DBE participation goals on prior projects.

Requests for waiver or modification of the goal for DBE participation shall be submitted to:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward Avenue, Suite 950  
Detroit, Michigan 48226**

The composition of the Waiver/Modification Committee is as follows:

Manager, Office of Disadvantaged Business Enterprises/Equal Employment Opportunities  
(chair)  
Contract Compliance Officer  
Director of Administrative Services / Manager of Procurement or designee

The requestor will be notified of the date and time of the Waiver Committee meeting for which the request will be considered. The requestor is allowed to appear before the Waiver Committee and make an oral presentation to supplement the written request. The oral presentation cannot take place of the written request and documentary evidence required to be submitted to show the efforts undertaken by the requestor.

The committee will consider the merits of the requests, the sufficiency of the evidence and documentation supporting the request, and make a determination relative to granting, modifying or denying the request.

If the department determines that the contractor has proven good cause and demonstrated a sufficient effort to achieve the goal in light of the cause, the department shall modify or waive the goal as requested. If the department denies the request or modifies the goal in a manner other than that requested, the department will notify the contractor. The department's determination will be provided by certified mail within twenty (20) calendar days after receipt of the request.

**Appeals** – Contractors, whose request for waiver or modification of the DBE participation goal has been denied, may appeal the determination.

Written appeals must be submitted within ten (10) calendar days of the contractor's receipt of the Waiver Committee's determination to:

**Suburban Mobility Authority for Regional Transportation  
Manager, Office of DBE/EEO Programs  
First National Building  
660 Woodward, Suite 950  
Detroit, Michigan 48226**

The composition of the Appeals Panel is as follows:

Manager, Office of Disadvantaged Business Enterprises / Equal Employment Opportunities Programs or designee  
General Manager or designee  
Director of Administrative Services or designee  
Manager of Procurement or designee

The Appeal Panel's determination will be provided by the MODBE through certified mail to the contractor within fifteen (15) calendar days.

Determinations of the Appeals Panel are administratively final.

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

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

## **Counting DBE Participation Towards Goal**

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

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

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a US DOT/FTA-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

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

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

(c) Count expenditures to a DBE contractor towards DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs does not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c) (3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) SMART's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to US DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

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

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insured, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease agreement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

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

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

(1) (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

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

(2) (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials , required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

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

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business as provided in this paragraph (e) (2) (ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

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

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or

transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided in for 26.87 (I).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements or your overall goal until the amount being counted toward the goal has been paid to the DBE.

### **Prompt Payment**

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) calendar days from the receipt of each payment the prime contractor received from the department. The prime contractor agrees further to return retainage payments to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of SMART. This clause applies to both DBE and non-DBE subcontractors.

This prompt payment provision is a requirement of 49 CFR 26.69 and does not confer a third-party beneficiary right or other direct right to a subcontractor against SMART.

**CERTIFICATION  
STANDARDS  
AND  
PROCEDURES**



## E. CERTIFICATION STANDARDS FOR DBEs

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

### **Small Business Concern**

In order to be certified, a business must qualify as a small business concern as defined by the U.S. Small Business Administration regulations, 13 CFR Part 121, as amended. The applicable size standard for each applicant shall be determined by identifying the firm's primary area of work, locating the applicable Standard Industrial Classification (SIC) code, and applying the corresponding Small Business Administration (SBA) size standard.

**No business shall be considered small if average annual gross receipts of the business and its affiliates exceed \$16.6 million over the previous three fiscal years, even though receipts do not exceed the threshold for the applicable SIC code.** This maximum size standard is adjusted periodically to offset inflation.

### **Social and Economic Disadvantage Status**

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

Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. If the statement of personal net worth shows the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage is rebutted.

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

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

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

Persons who are visibly identifiable as a minority need not provide documentation of their racial heritage, but may be required to submit a photograph. Persons who are not visibly identifiable as a minority must provide documentation of their racial heritage on a case-by-case basis.

### **Individual Determinations of Social and Economic Disadvantage**

Persons who are not presumed to be socially and economically disadvantaged, including individuals whose presumed disadvantage has been rebutted, may apply for DBE certification. The applicant has the burden of demonstrating, by a preponderance of evidence, that they are socially and economically disadvantaged. No individuals whose personal net worth exceeds \$750,000 may be deemed economically disadvantaged. In making determinations of social and economic disadvantage for non-presumptive individuals, the department will use the standards set forth by 49 CFR Part 26, Appendix E.

## **Ownership**

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

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

## **Control**

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

### **1. Operational control:**

- A. Of primary importance is the extent to which the disadvantaged owner actually operates the business. The disadvantaged owner must show he or she makes the basic decisions in the daily operations of the firm.
- B. The disadvantaged owner must have an overall understanding of, and technical competence and experience directly related to the type of business in which the firm is engaged and in the firm’s operations. Technical competence is defined as experience, education, expertise, and/or background sufficient to afford the disadvantaged owner an ability to control the critical operations such as estimating, marketing, sales, field supervision, and bidding. Technical competence in this sense Does not mean expert knowledge. It means substantial knowledge of the technical requirements of the industry for which the business seeks certification.
- C. If state or local law requires a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged person(s) who owns and controls a potential DBE firm must possess the required license or credential.

- D. The disadvantaged owner should be able to show that basic decisions pertaining to the daily operations of the business are made independently. If a disadvantaged owner relies on the decisions of other employees in the critical operations of the firm's business, the disadvantaged owner must show he or she can intelligently use and critically evaluate information presented in making decisions concerning the daily operational activities of the business.
- E. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- F. In order to be viewed as controlling a firm, a disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevents the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

## 2. **Managerial control:**

- A. The disadvantaged owner must have the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operation.
- B. The disadvantaged owner should be able to show there are no restrictions through corporate charter provisions, by-law provisions, contracts, voting rights or powers, bank signatures, or any other formal or informal devices which would limit control of the firm.
- C. The disadvantaged owner should be able to show, clearly through documentary evidence, that he or she controls the firm in areas such as, but not limited to:
  - (1) The disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  - (2) In a corporation, disadvantaged owners must control the board of directors.
  - (3) In a partnership, one or more disadvantaged owners must serve as general partners with control over all partnership decisions.
  - (4) The disadvantaged owner must have the power to hire and fire any persons to whom key control operations have been delegated.

- D. Differences in wages and other compensation between the disadvantaged owner and non-disadvantaged individuals will be considered as a factor in determining who controls the firm.

### 3. **Independence:**

- A. An independent firm is one whose viability does not depend on its relationship with another firm or firms. The factors which will be reviewed by SMART in determining independence pursuant to 49 CFR 26.71 include relationships with non-DBE firms in areas such as personnel, facilities, equipment, financial and/or bonding support, and other resources.
- B. A firm is considered controlling or having power to control a certified DBE or an applicant when one or more of the following circumstances are found to exist:
  - (1) Officers, directors, employees or principal stockholders of one firm serve as a working majority on the board of directors or officers of the DBE firm.
  - (2) The DBE shares common office space, and/or employees, and/or equipment, and/or other facilities with another business (whether or not for a purported fee or other consideration) particularly where both firms are in the same or related industry or field of operations or were formerly affiliated.
  - (3) Former officers, directors, principal stockholders, and/or key employees of one firm organize a new DBE business in the same or related industry or field of operation, and serve as its officers, directors, principal stockholders, and/or key employees.
  - (4) One firm furnishes or will furnish the other with subcontracts, financial or technical support and/or other facilities (whether or not for a purported fee or other consideration).
- C. The department will also consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms compromise the independence of the potential DBE.
- D. The potential DBE's relationships with prime contractors will be examined to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of a potential DBE.
- E. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to show that a firm is an independent business.
- F. A business operating under a franchise or license agreement may be certified if it meets the standards and the franchiser or licensor is not affiliated with the franchisee or licensee.

## **Work Classifications:**

The department will grant certification only in specific types of work in which the disadvantaged owners have the ability to control the firm.

## **Length of DBE Certification**

DBE certification is valid up to three years unless certification is removed.

Certified firms will be required to submit a yearly affidavit that there have been no changes which would affect the firm's eligibility to participate as a DBE. Complete, notarized, affidavits must be returned annually with the appropriate supporting documentation.

***The accuracy of tax forms and other documentation provided may be confirmed***

***By the Michigan Department of Treasury.***

The department must be notified, in writing, of any changes which would affect the size, disadvantaged status, ownership or control requirements, or any material changes in the information provided in the certification application as follows:

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

**It is the responsibility of the DBE to notify the department  
of any  
change in address or phone number**

## **F. DBE CERTIFICATION PROCEDURES**

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### **Purpose**

SMART's certification procedures are designed to ensure that all businesses participating in the DBE program meet the eligibility standards defined in US DOT Regulation 49 CFR Part 26. A business certified as a DBE by SMART can bid on federally-funded projects with DBE contract goals in the State of Michigan.

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

SMART will only certify firms that provide transportation-related goods or services, and meet all federal eligibility standards.

### **Processing of Applications**

The completed ***Disadvantaged Business Enterprise (DBE) Uniform Certification Application for Michigan*** and all other requested information should be mailed or delivered to the following address:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward, Suite 950  
Detroit, Michigan 48226**

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

SMART will certify eligible firms within 90 calendar days after receiving from the applicant firm all information required by 49 CFR 26.73 (c). SMART is allowed a one time extension of 60 additional calendar days upon providing written notice to the firm of the reason for the extension.

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

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## **On-Site Visits**

On-site visits are informal; written interviews are conducted by SMART personnel with a firm's principal owner(s) and key employees, as deemed necessary, in accordance with US DOT Regulation 49 CFR 26.83 (c) (1).

On-site visits are conducted on all firms seeking first time certification, as well as renewal applicants. They are held at the applicant's principal place of business.

The order of priority for conducting on-site visits shall be the date complete application packets for DBE certification or recertification are received by the department. On-site visits will be scheduled at a mutually convenient time for the department and the firm. In addition, on-site visits are conducted as a result of:

1. US DOT request
2. SMART request
3. Other DBE certification agency requests
4. Company changes affecting eligibility
5. Third-party written complaint

The ODBE conducts on-site visits at the owner's principal place of business to verify information submitted with the application. A report on the information gathered at the on-site visit, and all documents on file, is developed and presented to the Certification Review Team for its review and recommendation.

During the on-site visit, the firm's principal(s) are presented written questions intended to clarify any inconsistencies in the application package. Questions are designed to verify whether or not the applicant(s) meet the eligibility standards. The firm's principal(s) is required to respond in writing to all questions presented. During the on-site review, a firm's financial, corporate, and payroll records, etc., may be reviewed.

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

Firms applying for DBE certification must be prepared to verify their status by making available for review the appropriate books, records, and other documents pertaining to the financial and operational aspects of the firm and its principal(s).

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

If SMART determines that it is necessary to review any personal records of the firm's principal(s), it shall submit a written request to the firm's principal(s), detailing the basis and reason the information is being requested.



At the end of the on-site visit, the firm's principal(s) will be provided an opportunity to copy the written questions and the written responses. In the event that copying facilities are not available, the department staff conducting the on-site review will copy the questions and the written responses upon their return to the office and mail them to the firm's principal(s).

## **On-Site (Job-Site) Field Monitoring Visits**

On-Site (Job-Site) field monitoring visits are conducted by SMART staff members from the Office of DBE/EEO Programs and the Manager of Facilities, on certified DBE firms and prime contractors participating in SMART contracts, in accordance with 49 CFR 26.37.

SMART conducts (O/S – J/S – FMV) on prime contractors to assure that DBE firms working on the contract do a commercially useful function in accordance with 49 CFR 26.55.

Job- Site field monitoring is conducted on certified DBE firms and firms seeking DBE certification to verify the firm's control and independence. Field monitoring (job site visits) is required during SMART's eligibility investigation of DBEs by 49 CFR 26. 83 (c) (1). Following certification, ongoing job-site field monitoring is required by 49 CFR 26.37 (b).

Field monitoring consists of observations, interviews, file and document reviews to determine the extent of DBE participation on active SMART projects and whether that participation meets commercially useful function requirements.

Job-Site field monitoring of certified firms may be initiated by:

1. US DOT request
2. SMART request
3. Third-party written complaint
4. Projects with DBE participation

Any certification or prequalified firm participating in a SMART contract that has DBE goals shall cooperate with the department's representative during field monitoring. Failure to cooperate with the department's request may be a cause for denial and/or removal of eligibility to participate as a DBE under 49 CFR 26.109 (c), or result in a loss or reduction of prequalification rating of prime contractors via penalty under 1979 AC, R 247.46, Classification and Rating of Bidders.

## **Certification Review Team**

The CRT will review the certification application and accompanying documents, the on-site report, and all other documentation submitted. Based on their review, the CRT will determine if the applicant meets the eligibility standards established in federal regulations and/or state law and shall recommend an appropriate action.

The CRT shall consist of SMART's Manager of DBE/EEO Programs and Contract Compliance Officer. The members of the team shall have a combination of expertise or experience in the transportation industry from such disciplines as engineering, contracts, business finance, business management, procurement, and affirmative action.

The CRT is composed of:

Manager of DBE/EEO Programs  
Contract Compliance Officer

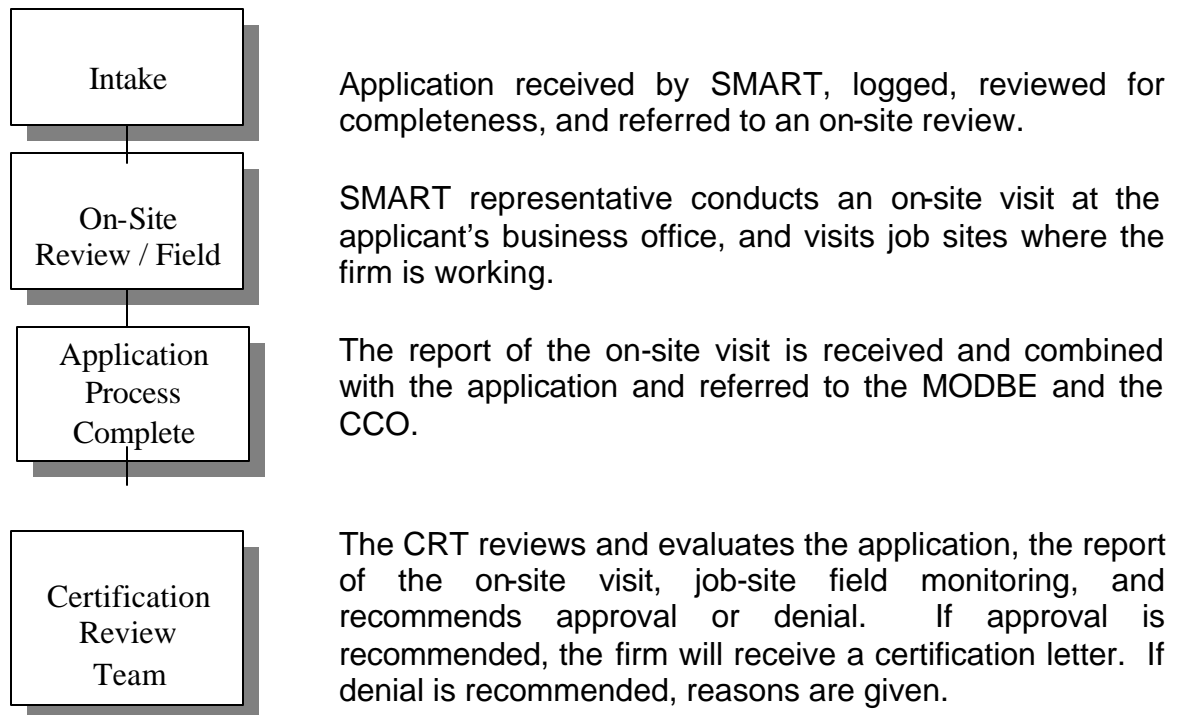
Ex-officio members may be brought into the CRT, on an as-needed basis, to provide specific expertise to enhance the team's ability to make more informed recommendations. An ex-officio member is a person who works for SMART.

The CRT may also review an application if, when the applicant meets with the Contract Compliance Office, the applicant provides additional information which may warrant reconsideration.

The Team may:

1. Recommend approval
2. Recommend denial
3. Recommend removal of eligibility
4. Request on-site visit
5. Make recommendations resulting from the on-site visit

## **Certification Procedure**



## **Manager MODBE**

The MODBE and the CCO shall review and render a decision. Should the MODBE overrule, the basis for the decision shall be clearly stated. The MODBE may consult with the General Manager to review the decision.

## **Process for Denial of Certification Eligibility**

If the grounds are deemed sufficient for denial of eligibility, the applicant or firm will be provided with a written notice of the denial of eligibility and reason(s) for denial and their option to appeal to US DOT, or reapply for certification in 12 months.

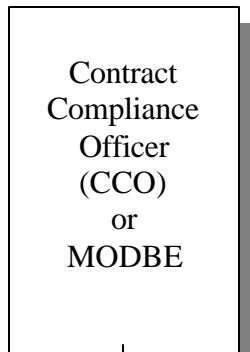
## **Process for Removal of Certification Eligibility**

The flow chart with explanation on page 37 describes the process leading up to and including denial of certification. A similar chart appears on page 40 showing the removal of eligibility process. (Charts are intended to graphically portray the process).

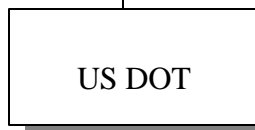
## **Contract Compliance Officer**

The Contract Compliance Officer (CCO) will be the assigned individual representing the department to parties receiving notices of intended denial, or, for certified firms, of possible violations of commercially useful function (CUF) requirements (see page 44 for information about CUF) and intended removal of eligibility.

## Denial of Certification Procedure



The MODBE reviews the recommendation of the CRT. If grounds for denial are sufficient, the applicant is mailed a **Notice to Deny Certification** with the reasons for the decision, and advised of the opportunity, to appeal the notice of denial of certification to US DOT within 90 calendar days from the date of delivery of the notice.



Firms may appeal to US DOT within 90 calendar days of the denial of certification. The appeal letter must contain information and arguments on why the denial should be reversed.

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

## **Removal of Eligibility**

Removal of eligibility to participate in the department's DBE program may occur for any of the following reasons:

1. Notification by the firm that it no longer meets federal regulations for DBE certification.
2. If the DBE's business entity has changed to the extent the business is no longer a small business concern.
3. For federal-aid projects funded by FTA funds, if the socially and economically disadvantaged individual's status has been challenged and the department has found the individual does not meet the definition of a "socially and economically disadvantaged individual" used in 49 CFR 26.63, 26.67, and Appendix E, "Individual Determinations of Social and Economic Disadvantage", and that the firm is no longer owned and controlled at least 51 percent by a socially or economically disadvantaged individual(s).
4. If the firm's business entity has changed to the extent the business is no longer owned and controlled by socially and economically disadvantaged individual(s) as defined by the federal regulation.
5. For federal-aid projects if the department receives an order from the Office of the Secretary of Transportation, US DOT, to remove the eligibility of a DBE firm.
6. If an investigation, initiated by third-party complainant or otherwise, reveals evidence of the firm's failure to satisfy the ownership and control requirements set forth in 49 CFR Part 26.

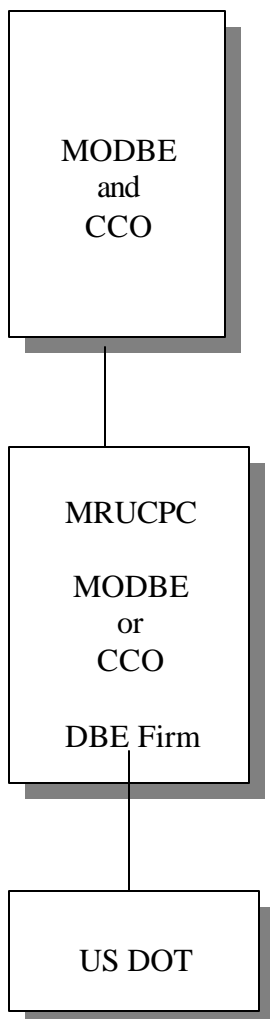
Pursuant to 49 CFR 26.87 (a) (3), if the investigation shows the firm remains eligible for DBE certification, both the firm and the complainant will be notified in writing of the determination and the reason(s) for it.

7. If an investigation uncovers evidence of violations 49 CFR Part 26, with regard to the actual work performed by a DBE, and the findings and conclusions shows that the firm's ownership or control has changed to the extent that the firm is no longer eligible.

The firm will be given an opportunity to rebutt findings of the investigation at a conference with SMART's the MODBE and/or CCO and the Michigan US DOT Recipients Unified Certification Program Committee (MRUCPC). Firms failing to attend the scheduled conference may be removed from the program for failure to cooperate.

Removal of eligibility may result from a Commercially Useful Function (CUF) violation, which indicates the firm no longer meets federal certification eligibility standards. Refer to page 44 for further information on CUF.

## Removal of Eligibility Procedure



The MODBE and the CCO review documents indicating a firm may be ineligible to participate as a DBE. If grounds for removal of eligibility are sufficient, the firm is mailed a **Notice of Intent to Remove Eligibility**, with the reasons for the decision, and advised of their rights to request a appeal hearing of the documents by the Michigan US DOT Recipients Unified Certification Program Committee (MRUCPC). The applicant has thirty (30) calendar days from the date of the delivery of the notice of intended removal of eligibility to appeal.

The MODBE or CCO must schedule an appeals hearing within 15 days of receipt of a request. At the MRUCPC conference, reasons for the intended removal of eligibility will be discussed. The MRUCPC will receive information and evidence from the DBE Firm intended to show that certification eligibility should not be removed, and will ask questions related to the intended removal of eligibility.

The MODBE or CCO will present information that indicates grounds for removal of eligibility to the MRUCPC. The DBE firm's Representative has the right to be present to rebut information contained in the intended removal of eligibility. If the intended removal of eligibility has not been rebutted, a **Intent to Remove Eligibility** will be issued.

Firms may appeal to US DOT within 90 calendar days of the date of the MRUCPC's opinion and order. The appeal letter must contain information and arguments on why the removal of eligibility should be reversed. Pending US DOT's decision in the matter, SMART's and the MRUCPC's appeals decision remains in effect.

49 CFR 26.89 describes the process for appeals to US DOT.

Firms who have had DBE certification removed must wait twelve (12) months after the effective date of the final decision before reapplying for DBE certification

**DBE COMPLIANCE  
AND  
ENFORCEMENT**



## **G. COMMERCIALLY USEFUL FUNCTION (CUF)**

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

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

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

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

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

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

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

Detail regarding performance of a CUF is provided below:

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

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

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

1. The DBE or his/her superintendent must, on a full-time basis, supervise and control the work of the contract.
2. The majority of the DBE's workforce and his or her superintendent/foreman must be regular employees of the DBE.
3. On a limited basis, when the contract requires specialized knowledge, a DBE may be allowed to augment his or her workforce with personnel who normally work for another firm. ***In each case, the DBE shall request, in writing, and secure the SMART's approval of the arrangement prior to commencing the work of the contract.***

Prior to allowing any arrangement, SMART shall ensure that:

1. The arrangement is not designed to provide the DBE with basic labor requirements of the contract;
2. The arrangement is on a limited basis and not long-term, repetitive, or continuing. Long-term, continual or repetitive use by a DBE firm of personnel primarily employed by a non-disadvantaged firm will be construed as an attempt to artificially inflate DBE participation and will not be allowed;
3. Exclusive of the arrangement, the majority of the DBE's work force and his or her superintendent or foremen must be regular employees of the DBE; and,

4. The arrangement should be indicative of normal industry practices and should not represent a significantly greater portion of the contract work than would be expected on the basis of normal industry practices.

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

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

1. It is not acceptable to bid a project based on a "labor and materials only" basis. The DBE must either own or lease equipment used to do its work. The cost of equipment leased from the prime or an affiliate of the prime may not be counted toward DBE participation goals.
2. A DBE must submit lease agreements for all equipment leased. Lease/rental agreements must be separate from the subcontract, and must specify the terms of the lease agreement. Operation of leased/rented equipment should be subject to the full control of the DBE.
  - A. If the equipment is of a specialized nature, the lease may include the operator. If this practice is generally accepted within the industry, the operator can remain on the lessor's payroll. Such an arrangement should be for a short-term and involve a specialized piece of heavy equipment readily available at the job site.
  - B. For equipment that is not specialized, the DBE is expected to provide the operator and to be responsible for all payroll and labor compliance requirements.
3. A DBE may not pay for rented or leased equipment by having the payment deducted from the prime contractor's payment(s) to the DBE for work done.

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

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

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

**Trucking Operations** – The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

1. DBE trucking firms must own at least one fully licensed, insured, and operational truck that is used on a day-to-day basis. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insured, and operates using drivers it employs.
2. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. All lease agreements must be submitted to SMART for review.
3. The DBE may also lease trucks from a non-DBE firm, including an owner-operator.
  - A. The DBE who leases trucks from a non-DBE is entitled to credit toward DBE participation goals only for the fee or commission it receives as a result of the lease agreement.
  - B. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
4. A lease must indicate that the DBE has exclusive use of and control over the truck. This does not prevent the leased truck from working for others during the term of the lease, with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased trucks.
5. All leased trucks must display the name and identification number of the DBE.

## **Commercially Useful Function Reviews and Outcomes**

SMART conducts Job-Site field monitoring of prime contractors to assure that DBE certified firms working on contracts performed a CUF. Investigations are done by SMART's Manager of Facilities (MOF), Manager Office DBE/EEO Programs (MODBE) and/or the Contract Compliance Officer (CCO), on DBE firms suspected of not performing a CUF as a result of job-site field monitoring or based on receipt of a third-party complaint. Investigations showing a DBE may not have complied with all CUF requirements on a project(s) will result in the firm being called in for a conference with the Manager Officer DBE/EEO Programs (MODGE) and/or the Contract Compliance Officer (CCO) to discuss the alleged violation(s). Failure to attend a conference may result in the firm's eligibility to participate in the DBE program being removed for failure to cooperate. Following the CUF conference, the MODBE will review information received and make a determination regarding the DBE firm's compliance with the federal regulations 49 CFR 26.37. Firms are notified in writing of the determination. Determinations include:

1. No violation of federal regulations found.
2. Minor violation(s) of federal regulations will result in the firm being cited and warned that future violations may result in removal of eligibility to participate as a DBE. The cited firm is subject to increased field monitoring of the firm's projects.
3. The department may remove work classifications related to CUF violations. Firms do not have the right to appeal removed work classifications.

4. The department may remove a firm's eligibility to participate as a DBE if it is determined that minor violations occurred on more than one project;
5. One major violation showing willful intent to subvert the federal regulations may result in removal of firm's eligibility to participate as a DBE.

Further information on removal of a DBE's eligibility may be found in 49 CFR 26.87, and on pages 37-40 of these procedures.

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

1. The prime will be determined to have a deficiency in DBE participation corresponding to the dollar value of the DBE's work that did not meet federal regulations.
2. US DOT/FTA and the MUCP certifying members will be notified that SMART has overstated the reported DBE participation for this project.
3. The MUCP certifying members will be notified of the prime's DBE participation deficiency on the project.
4. Primes are subject to a wide variety of sanctions, ranging from a written notice of violation, up to and including loss of bidding privileges or criminal charges.

## H. THIRD-PARTY COMPLAINTS

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As provided by 49 CFR 26.87, any person may file a written complaint alleging that a currently certified firm is in violation of DBE regulations. Information received about a DBE prior to the initial certification decision being made will be considered in the investigation of the application for certification.

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

1. The ineligibility complaint shall be filed with SMART, DBE/EEO Programs Office in writing no more than 180 days after the date of an alleged violation or the dates on which a continuing course of conduct in violation of this part was discovered. The department may extend the time for filing or waive the time limit in the interest of justice, specifying in writing, the reason for doing so. The complainant shall include any information or arguments supporting their assertion that the DBE firm against whom the complaint is lodged is ineligible and should not continue to be certified.
  - A. The complainant must sign the complaint and give an address and telephone number where they may be reached during the investigation.
2. While the complaint is pending, the DBE against whom the complaint was lodged will remain eligible to participate in the DBE program.
3. SMART's DBE/EEO Programs Office will evaluate information available to it and may also request additional information from the DBE firm or conduct any other investigation deemed necessary.
  - A. A DBE will not have its eligibility removed based on a complaint without first having an opportunity to respond to the complaint.
  - B. Failure of the DBE to appear at a scheduled investigatory conference or to respond, if requested by the MODBE, in writing to the complaint within thirty calendar days of mailing may result in removal of eligibility.
4. SMART's Manager Office DBE/EEO Programs (MODBE) will make a determination as to the eligibility of the DBE based on the record. Both the complainant and the DBE will be notified in writing of the determination and the reasons for the determination. Notifications shall reference specific evidence in the record on which each reason is based.
  - A. If the Office of DBE/EEO Programs (ODBE) intends to remove the DBE's eligibility to participate in the DBE program, the process for removal of eligibility, as outlined on pages 37-40, shall be followed.
  - B. If the MODBE determines there is no reason to believe that the DBE against whom the complaint is filed is ineligible, the department will inform the challenging party in writing.

5. The complainant may request, in writing, a review of the decision before SMART's MODBE and the Michigan Unified Certification Program Committee (MRUCPC). The request must be made within 30 calendar days of the date of written notification of the decision. If no request for review is submitted within thirty (30) calendar days, the decision is final.

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

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

1. If US DOT believes the record provides reasonable cause to believe that a DBE certified by SMART is not eligible, US DOT may direct SMART ODBE to begin proceedings to remove the DBE's certification.
2. US DOT will provide SMART's ODBE and the DBE firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
3. SMART's ODBE must immediately take steps to remove the DBE's certification eligibility. The ODBE will follow the process for removal of eligibility, as outlined on pages 38-40.

**All participants in the DBE program, including contractors using DBE's to meet contract goals, are required to cooperate fully with SMART in a compliance or certification review, investigation or request for information. Failure to cooperate may result in a finding that the firm is not in compliance with the program procedures and appropriate actions against the firm may be taken.**

## **Intimidation or Retaliation Acts Prohibited**

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



# **SUPPORTIVE SERVICES**

## I. SOLICITATIONS

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SMART notifies all certified DBEs and all known minority and women organizations, informing them of the contracting opportunities at SMART's upcoming lettings.

Currently, plans and proposals may be reviewed at SMART's Detroit offices:

At the present time, SMART advertises its projects for bids and requests for professional services in each of two weekly subscription magazines:

Detroit News and Free Press Newspapers || Michigan Chronicle – Weekly Newspaper

The above newspapers print detailed information on each project as well as a list of prospective bidders before, and the successful bidder after the letting.

You can access this same information through the SMART's Electronic Bulletin Board System (coming soon).

(313) XXX-XXXX (Dial-in access) (coming soon)

Web page access (coming soon)

### Assistance Contracts

The MODBE will provide technical assistance to DBEs relating to SMART's project plans, specifications, and bid proposals. This assistance will be aimed at participants who have construction contracts.

Effective April 1, 2000, the Department intends to continue its advertising through the above daily and weekly subscription news papers.

SMART plans to do all advertising.

## **J. DBE DIRECTORY**

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An up-to-date directory of certified firms is available from SMART and MRUCPC members. The directory is provided to all bidders and proposers and is available for those who express an interest. The directory is published annually and updated as needed, and can soon be read via SMART's new website.

The DBE directory is divided into six parts:

**Part A**        Alphabetical list of certified DBE firms; including names, addresses, telephone numbers, and work professional classifications that the firm's that have been determined to possess adequate resources to perform.

**Part B**        Commercially Useful Function Advisory.

To obtain a copy of the *DBE Directory of Certified Firms*, write or call SMART at:

**Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs  
First National Building  
660 Woodward Avenue Suite 950  
Detroit, Michigan 48226  
(313) 223-2116**

or

**Visit SMART's Website (soon to be up and running)**

## **K. EDUCATION AND TRAINING PROGRAMS**

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

SMART will provide education and training in order to compliment the technical assistance as mandated by Supportive Services requirements of the federal regulations.

The education and training programs consist of, but are not limited to, the following:

- ? Business development workshops
- ? SMART and industry-sponsored seminars and training sessions
- ? Pre-Letting training modules
- ? Program information advisories
- ? In cooperation with the Michigan Small Business Development Centers, specialized training seminars tailored to the needs of DBE firms
- ? Information technology seminars (identifying hardware/software needs and technical assistance for web, SMART's bulletin board, and bidding electronically access) coming soon
- ? Educational / Training

## **L. TECHNICAL ASSISTANCE**

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The Office of DBE/EEO Programs of SMART provides technical assistance to DBEs. Assistance is provided by the internal staff, technicians, and technical specialists.

Technical assistance is provided to DBEs in the following areas:

1. Interpretation of plans, proposals, special provisions, and specifications
2. Pre-letting meetings and related seminars
3. Workshops on plan reading, project documentation, claim procedures, force accounts, payroll requirements, maintaining traffic, and other areas
4. Project site investigation prior to bidding the project
5. Payment issues
6. Information source of materials and equipment
7. Sub-letting, bid documents, bonds, affidavits, and insurance requirements
8. Solving problems from start to the completion of the project
9. Disputed claims
10. Liaison between DBEs, local agencies, and the ODBE

## **M. DBE ORIENTATION**

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ODBE conducts Orientation sessions for newly certified DBEs which include an explanation of the program requirements and an overview of the process in contracting with SMART.

The Orientation sessions provide materials and information regarding the following:

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

**SPECIAL DBE PROGRAM  
ATTACHMENTS  
AND EXHIBITS**

## ATTACHMENT A

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

(To be included in all federal-aid contracts, subcontracts, and sub-subcontracts)

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

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

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

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



SUBURBAN MOBILITY AUTHORITY for REGIONAL TRANSPORTATION

**SPECIAL PROVISION  
FOR  
SUBMISSION OF ALL QUOTES  
RECEIVED ON PROJECTS BY SUBCONTRACTORS**

Revised: 08/05/99

Subsection 102.05 on page 1.12 of the 1996 Standard Specifications, is to be Changed by adding the following.

**102.05 Preparation of Proposal.**

All bidders must submit a list of names of all sub-contractors (DBE and non-DBE) who quoted items of work on the project at the time of the bid. This list must include the names and addresses of the firms and their DBE or non-DBE status. The age of the firms and their annual gross receipts must be on record with SMART.

Subsection 102.06 B on page 1.13 of the 1996 Standard Specifications, is to be changed by adding the following.

102.06B. Proposals will be considered irregular and may be rejected for any of the following reasons:

8. Proposal is submitted without a list of names of all sub-contractors who quoted items of work.

In addition, the low-bidder must submit another list at the time of the award of the contract for any quotes received after the bid letting, and again with every sub-contract submitted. Failure by the low-bidder to comply with this special provision may result with non-award of contract or non-approval of subcontracts.

**CERTIFICATION or REMOVAL of ELIGIBILITY APPEALS HEARING FORMS**

EXHIBIT 1

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In the matter of

\_\_\_\_\_

STIPULATION TO SCHEDULE APPEALS HEARING

IT IS HEREBY STIPULATED AND AGREED by the parties hereto, through their respective counsel as follows:

That the SMART/MRUCPC members hearing scheduled for \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ a.m. be adjourned and;

That the hearing be scheduled for \_\_\_\_\_  
at \_\_\_\_\_ a.m.

\_\_\_\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_

ORDER

Pursuant to the above stipulation, IT IS ORDERED that the appeals hearing scheduled for \_\_\_\_\_ is adjourned to \_\_\_\_\_  
\_\_\_\_\_

At \_\_\_\_\_ a.m.

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Manager DBE/EEO Programs

EXHIBIT 2

---

In the matter of

---

**MOTION FOR GOOD CAUSE**

Applicant requests an adjournment of the scheduled \_\_\_\_\_

\_\_\_\_\_ hearing for the following reasons:

The foregoing is true and accurate to the best of my knowledge.

\_\_\_\_\_  
(Applicant Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_ Notary Public,

County, Michigan. My Commission expires \_\_\_\_\_  
\_\_\_\_\_.

(THIS FORM MUST BE ACCOMPANIED BY A PROOF OF SERVICE TO BE SENT TO ALL PARTIES IN THE MATTER. SEE ATTACHMENT C, EXHIBIT 3, PAGE 63)

**EXHIBIT 3**

---

In the matter of

\_\_\_\_\_

Suburban Mobility Authority for Regional Transportation )

County of \_\_\_\_\_ ) and

Michigan US DOT Recipients Unified Certification Program Committee

State of Michigan \_\_\_\_\_ )

**PROOF OF SERVICE**

\_\_\_\_\_ being first duty sworn, deposes and says  
that on

\_\_\_\_\_, \_\_\_\_\_, he/she served a true copy  
of

the attached \_\_\_\_\_ in the above-entitled  
matter

by personal service or deposited the same in the United States mail in the city of  
Detroit,

Michigan, enclosed in envelopes bearing postage, fully prepaid, plainly addressed as  
follows:

\_\_\_\_\_  
(Applicant Signature)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_.

\_\_\_\_\_ Notary Public,

County, Michigan. My Commission expires \_\_\_\_\_  
\_\_\_\_\_.

## EXHIBIT 4

(Hearing Recipient Letter – Example)

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\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

Suburban Mobility Authority for Regional Transportation  
Office of DBE/EEO Programs / Contract Compliance  
First National Building  
660 Woodward, Suite 950  
Detroit, Michigan 48226

### REQUEST FOR HEARING

We have received the Suburban Mobility Authority for Regional Transportation's letter dated \_\_\_\_\_, indicating the intent to:

\_\_\_\_\_ Remove eligibility to participate in the DBE program of,

\_\_\_\_\_  
Name of Firm

I, \_\_\_\_\_, the \_\_\_\_\_, of

\_\_\_\_\_, hereby request a hearing before Michigan  
US

DOT Recipients Unified Certification Program Committee and the Suburban Mobility Authority

for Regional Transportation to appeal SMART's intended action.

The basis of our/my appeal is: (Provide a brief statement outlining the basis for the appeal)

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

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Signature

---

Title

---

Date

---

## **ATTACHMENT C**

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### **MENTOR/PROTÉGÉ DBE DEVELOPMENT PROGRAM**

#### Introduction

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

#### Purpose

The purpose of the mentor/protégé program is to provide DBE firms with advice, assistance, and/or training. This concept is an optional approach available to assist SMART and the transportation contractors in complying with the requirements of both the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1982 and 49 CFR Part 26. It offers an opportunity to gain information and experience in a productive work situation for established DBEs needing training and assistance.

#### Scope of Program

SMART will establish and implement a Mentor/Protégé Development Program within the approval guidelines set forth by US DOT/ FTA. Such an implemented program can create relationships that comply with the requirements of both STURAA of 1982, and 49 CFR Part 26. These relationships will be of benefit to DBEs by enhancing their capabilities across many areas of the transportation industry. It must be noted that the Mentor/Protégé Development Program is not intended to diminish or circumvent existing DBE rules or regulations, but rather to increase legitimate DBE activities. Abuse of these program guidelines may be used as the basis for actions against the mentor and/or the protégé, including suspension or debarment from the transportation program.

#### Eligibility

1. The DBE firm must have been certified with SMART for a minimum of one year during the last preceding five years. The firm must have engaged in SMART contracts during this period.
2. DBEs who meet the certification requirements of 49 CFR Part 26, are eligible for participation in a mentor/protégé arrangement. SMART may grant approval of a mentor/protégé agreement during the time of its approval of the DBE application for recertification.
3. In all cases, the DBE firm must be an independent organization and the ownership by the disadvantaged individual(s) must be real. This does not preclude other employment

and/or business interest by the DBE firm owners, provided such employment or business interests do not conflict with the power of the disadvantaged owner to direct or cause the direction of the management and policies of the DBE firm to make the day-to-day, as well as major decisions, or matters or management, policy, and operations (see 49 CFR 26.61 Eligibility Standards).

## Arrangements/Agreements

1. Protégés may not engage in more than one mentor/protégé agreement at any given time. SMART recognizes that some mentors have the resources to train more than one protégé at a time SMART will carefully review those mentors seeking to carry more than one protégé at a time and will limit them to a maximum of two proteges at any given time.
2. A mentor/protégé arrangement will be evidenced by a well formatted development plan developed by both parties and approved by SMART (see Guidelines for Development Plan).
3. SMART will limit mentor/protégé agreements to two years or for the duration of a specified project or series of projects within the period.
4. Arrangements between the mentor and the protégé will be approved only if the protégé will acquire experience in operations other than those considered to be traditional DBE work (landscaping, seeding, sodding, curb and gutter, guardrail, and others as recorded in SMART files).
5. At the end of each month, the mentor and the protégé must submit to SMART, within twenty (20) calendar days, a combined detailed summary of the types of training provided. The summary should include a brief narrative on the hours and areas of involvement such as managerial, technical, financial, bonding, and insurance.
6. The mentor/protégé venture will not subcontract or assign purchase orders without the prior approval of SMART.
7. The protégé, from its net profit on each contract, should compensate the mentor for training cost as follows:

<u>Contract Size (DBE)</u>	<u>Compensation</u>
<b>\$200,000 - \$500,000</b>	<b>2.0%</b>
<b>\$500,000 - \$1,000,000</b>	<b>1.5%</b>
<b>Over \$1,000,000</b>	<b>1.0%</b>

Note: These are only the department's suggested upper limits. The mentor and the protégé may negotiate their individual compensation.

8. These are several types of arrangements which a mentor might provide to a protégé firm. These include:

### A. Financial Arrangements



A common type of assistance provided by a mentor would be working capital. Time notes and stock issuance are generally accepted legal instruments by which a DBE may obtain working capital. If stock issuance is the method chosen by the parties to arrange for the financing, the total amount of the DBE stock ownership must be at least 51 percent in order to retain its DBE certification.

In no case can the day-to-day control of the firm be relinquished by the disadvantaged owner as a requirement of the loan.

#### B. Technical and Management Assistance

A successful mentor can provide valuable training in the technical aspects of operating a highway construction, material supply, engineering, or other transportation-related business to a DBE firm, which may be relatively inexperienced. In addition, the mentor can also provide advice on project management and, in particular, make the DBE aware of techniques which may improve productivity and competitiveness. Other areas where training may be of benefit are in plan interpretation, estimating, and cost accounting methods. In each of these areas, however, the DBE contractor must retain the final decision-making responsibility.

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

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

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

#### D. Bonding

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

itself. Either of these instances may be applicable to a prime contractor and a DBE subcontractor relationship.

The mentor/protégé examples discussed here are not meant to be definitive. Other methods of encouraging and supporting the program may be allowable under the regulations. Contractors or associations with proposed innovative ideas and programs should bring them to the attention of SMART.

## Special Concerns

### 1. Exclusive Arrangements

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

### 2. Brokering

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

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

## Guidelines for Development Plan

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

1. The Development Plan should clearly set forth the objectives of the parties and their respective roles.
2. The Development Plan should be for two years or for the duration of a specified project or series of projects within the period.

3. The Development Plan should describe measurable benchmarks to be reached by the protégé (DBE) at successive stages of the plan.
4. The Development Plan should specify the utilization of the mentor's resources and the protégé's method of compensating the mentor for the use of them (see page 81 under Arrangement/Agreement).
5. The Development Plan should include training to be provided by the mentor to the protégé (DBE). Such training may include but not be limited to:
  - A. Business Planning
  - B. Recordkeeping
  - C. Technical
  - D. Loan Packaging
  
  - E. Financial Planning and Forecasting
  - F. Bonding and Insurance
  - G. Equipment Utilization
6. The Development Plan should contain a provision that the mentor/protégé agreement may be terminated by mutual consent and/or by SMART upon determination that:
  - A. The protégé firm no longer meets the eligibility standards for certification as a DBE.
  - B. Either party has failed or is unable to meet its obligations under the Development Plan.
  - C. The DBE is not progressing or is not likely to progress in accordance with the Development Plan.
  - D. The DBE has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the Development Plan.
  - E. The plan or provisions thereof are contrary to the requirements of federal, state, and/or local law or regulation, or otherwise harmful to public policy.
    - i. When the mentor/protégé agreement is terminated by either party, SMART must be notified within fifteen (15) days of the termination date.
    - ii. When SMART terminates the agreement, either party may appeal the decision to the department within ten (10) days of the receipt of notification.
7. The Development Plan may include a provision that the arrangement may be dissolved by either party for reasons other than those stated in item 6 above.
8. Copies of the Development Plan should be retained by all parties to the mentor/protégé agreement and SMART.

# ATTACHMENT D

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## DBE Prequalification

When prequalification is required/applicable by SMART:

- ✍ Beginning October 1, 1999, all newly certified DBEs will be required to be prequalified (if they wish to bid on SMART projects).
- ✍ All presently certified DBEs are anticipated to be prequalified by October 1, 2001.