



2021 DBE PROGRAM PLAN

**Office of Business Opportunity & Equity Compliance (OBOEC)
Division of Transportation System Development (DTSD)
Wisconsin Department of Transportation (WisDOT)**

FHWA Submission Date: December 31, 2020

12.1.2021 Update

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GENERAL REQUIREMENTS

Section 26.1: Objectives

Wisconsin Department of Transportation [WisDOT] supports all forms of transportation. The department is responsible for planning, building and maintaining Wisconsin's network of state highways and interstate highway system. The department shares the costs of building and operating county and local transportation systems - from highways to public transit and other modes. WisDOT plans, promotes and financially supports statewide air, rail and water transportation, as well as bicycle and pedestrian facilities.

Wisconsin Department of Transportation affirms that our implementation of the federal DBE program is applied to all contracts implemented by and through this organization that are procured and/or performed using funds received from USDOT including the modes of highway, transit and aeronautics. We use federal funds to procure construction and professional consulting services; WisDOT DBE program uses 49 CFR Part 26 guidance for any federal-aid procurement whether we are seeking contractors or consultants.

The goals of WisDOT's DBE program implementation are consistent with the objectives outlined in 49 CFR part 26:

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

Construction Procurements

WisDOT holds bid letting on the second Tuesday of each month. The letting is applicable to all types of highway improvements on the state trunk highway system, other street/highway systems for which federal-aid highway funds may be utilized, and other highways and roads for which WisDOT may act as an administrative agent.

Professional Service Procurements- Solicitations

WisDOT holds bimonthly solicitations for consultant interest in state highway and structure design projects. Firms submit Notice of Interest forms explaining their qualifications for each project in which they have interest. A schedule of these advertisements is available on the WisDOT website. Bimonthly solicitations may also include local government projects. WisDOT provides this service to municipalities wishing to find qualified firms for local transportation engineering projects. WisDOT's DBE Program Plan is the implementing guidance for those sub-recipients.

WisDOT Bureaus & Divisions and Corresponding Contract Opportunities

Bureau of Highway Maintenance	Traffic Analysis & Modeling
Landscape Architectural Services	ITS & Electrical System design
Freight Operations & Planning Analysis	Traffic Safety Engineering
Landscape Architectural Services	Traffic Incident Management
Bureau of Structures	Traffic Signal Design
Bridge Deck Survey	Bureau of Technical Services
Shop Inspection of Structural Steel	Real Estate Appraisal Services
Sign Structure Inspection	Archaeological Services
Underwater Bridge Inspection	Height Modernization - Geodetic Services
Structural Design & Plans	Pre-stressed Girder Inspection
Bureau of Project Development	Materials Management Services
Full-Service Design including Design/Build	Real Estate Reasonable Access Studies
Full-Service Construction	Storm Water Engineering
Roundabout Design	Falling Weight Deflectometer
Construction Technical Expert Services	Data Analysis
Value Engineering Services	Photogrammetric Services
Local Program Management	Utility Coordination Services
Estimating/Scoping Support Services	Real Estate Eminent Domain Services
Bureau of Planning & Economic Development	Archaeological Services
Traffic Modeling Services	Geotechnical Engineering
Traffic Forecasting	Survey Services
Bureau of Traffic Operations	Biological Services
Advanced Signal Systems Operation	LiDAR Services
Traffic Engineering	WisDOT Qualified Laboratory Inspection
Traffic Data Collection	Geodetic Services
Bureau of Transit, Local Roads & Railroads & Harbors	Bureau of Aeronautics
Local Government Transit Grant Management	Developing Air Transportation Facilities
Purchase Vehicles	Technical Expertise to Public and Stakeholders
Conduct Transit Studies	Improving Aviation Safety

Red- DTSD (Division of Transportation System Development)

Blue- DTIM (Division of Transportation Investment Management)

Work Types/NAICS codes historically used for DBE credit

Construction Services	NAICS Code	Professional Services	NAICS Code
Traffic Control	561990	Engineering Services	541330
Trucking	484220	Testing Laboratory	541380
Structures	238910	Public Relations	541820
Landscaping	561730	Environmental Consulting	541620
Sewer	238110	Drafting	541340
Grading/Drainage	238220	Administrative Management	541611
Materials/ Supplier	423390	Architecture	541310
Survey	541360	Surveying	541370
Retaining Wall	238110	Soils Testing	541380
Bridge Painting	238320		
Highway/General Construction/	237310		
Concrete/Paving	237310		
Signage	237310		

Section 26.3: How to Apply Program

As a recipient of federal funds, WisDOT acknowledges that we are required to administer our DBE program in compliance with all laws, regulations, executive orders, and official guidance applicable to program administration.

Guidance and Interpretations

Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part [26](#) and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

Use of Questions & Answers published by USDOT

The General Counsel of the USDOT Department of Transportation periodically reviews questions and answers and approves them as consistent with the language and intent of 49 CFR Part 26. WisDOT recognizes that these questions and answers represent the institutional position of the US Department of Transportation.

These questions and answers provide guidance and information for compliance with the provisions under 49 CFR part 26, pertaining to the implementation of the US DOT disadvantaged business enterprise program. Like all guidance material, these questions and answers are not, in themselves, legally binding or mandatory, and do not constitute regulations. They are issued to provide an acceptable means, but not the only means, of compliance with Part 26. While these questions and answers are not mandatory, they are derived from extensive DOT, recipient, and contractor experience and input concerning the determination of compliance with Part 26. Clarification and guidance will be accompanied by this statement:

“The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26.”

Compliance with Court Orders

Nothing in this subsection limits the eligibility of an individual or entity to receive funds made available under divisions A and B of this Act and section 403 of title 23, United States Code, if the entity or person is prevented, in whole or in part from complying with paragraph (2) because a Federal court issues a final order in which the court finds that a requirement or the implementation of paragraph (2) is unconstitutional.

In a 1991 court case, Milwaukee Pavers versus the Wisconsin Department of Transportation, the WisDOT was “enjoined permanently from setting of goals for disadvantaged business subcontractor participation on exclusively state funded projects.” Wisconsin Statutes also effectively prohibit WisDOT from using Disadvantaged Business Enterprise (DBE) goals on anything other than federal funded contracts when required as a condition of federal funding in 84.076(5).

Section 26.5: Definitions

WisDOT acknowledges the adoption of the regulatory definitions used in 49 CFR Part 26. A glossary of terms that are relevant for DBE program implementation but may be unique to WisDOT are included in the glossary at Attachment 1.

Section 26.7: Non-discrimination Requirements

WisDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

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

WisDOT physically inserts FHWA 1273 document into every contract that includes USDOT funding or assistance. The May 1, 2012 version of the FHWA 1273 form is currently being utilized.

Section 26.11 (a): Uniform Report

WisDOT will transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B of 49 CFR part 26, at the intervals stated on the form. Namely, the DBE Program Chief in the Office of Business Opportunity and Equity Compliance (OBOEC) will ensure that the Uniform report for the first and second halves of the year will be submitted on or before their due dates: June 1 and December 1. *(Review Sample Uniform Report in Attachments at P.44)*

Section 26.11(c): Bidders List

The Wisconsin Department of Transportation requires all contractors and consultants who work on construction projects to register as vendors in the Civil Rights and Compliance System (CRCS). This electronic system also serves as a tool to determine the number of ready, willing, and able DBE firms. The WisDOT contractor registration system is implemented through the WisDOT CRCS. The CRCS is a multi-purpose web-based system developed and procured by WisDOT under contract with an outside consulting firm and is accessible at <http://app.mylcm.com/wisdot/login.aspx>. Wisconsin is currently transitioning to AASHTOWARE Project (AWP) which will serve the same functions currently provided by CRCS for construction firms.

Consultants must register in CARS. The Contract Administration and Reporting System (CARS) is a web-based application that the Division of Transportation System Development Consultant Services Unit uses to manage and support consultant contracting. CARS registration is mandatory for all firms working on WisDOT professional service contracts. CARS data includes all vendors, the engineer roster, and firms who competed for WisDOT professional service contract opportunities. CARS software is used by both WisDOT and all firms competing for WisDOT professional service contracts as it allows the Department to perform electronic invoicing and evaluations of contracts.

The Department will maintain a bidders list to catalogue the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our USDOT-assisted contracts for use in helping to set our overall goals. The bidders list includes the name, address, phone, email, DBE and non-DBE status, business type, work classification, business age categories 1-4 and, gross receipt categories 1-4.

Bidder’s List Categories

	Business Size Categories	Business Age Categories
1	Less than \$2 million	Less than 5 years
2	\$2 - \$14.9 million	5 – 15 years
3	\$15 million - \$23 million	16 – 25 years
4	More than \$23 million	More than 25 years

Section 26.11(d): Maintain and Retain Records of Certified Firms

Pursuant to 49 CFR Part 26, WisDOT indefinitely retains the certification application packages for each DBE that it approves for certification. The certification file/record includes the application, all No-Change Affidavits, all business changes submitted by the firm, and all on-site review reports. WisDOT’s DBE records retention plan is included in the agency’s Records Retention and Disposition Policy. Each policy is reviewed by General Counsel and the WisDOT Records Officer, then is presented to a State Records Board quarterly.

Records Retention/Disposition Authorization (RDA), also known as records retention schedule, is the policy that allows the disposal of records after a certain period of time. It outlines how long records are to be retained, maintained, and their disposition after a retention period has ended. By statute, RDAs, expire after a period of 10 years from the date of their original approval by the [Public Records Board \(PRB\)](#). The sunset requirement forces periodic re-evaluation of records, quality control, and confirmed compliance with recordkeeping guidance.

Three years is the minimum and 10 years is the maximum record retention period for other records related to DBE program implementation.

WisDOT will comply with the information requests pursuant to FOIA guidelines and provide data regarding the DBE Program to the Department as directed by the USDOT operating administrations.

Section 26.11(e): UCP Information to OST

WisDOT will forward the DBE Directory Demographics report, required by the MAP-21 and FAST ACT transportation bills, to the Department of Transportation's Office of Civil Rights before January 1 on an annual basis. The report includes demographic information by percentage of the DBE firms listed in the Wisconsin UCP DBE Directory controlled by women, socially and economically disadvantaged individuals (that are not women), and individuals who are women and are otherwise socially and economically disadvantaged individuals. The UCP DBE Directory also includes the location and contact information of all certified DBEs in the state.

Section 26.13(b): Required Assurances

Secretary's Assurance

WisDOT has signed the following assurance, applicable to all USDOT-assisted contracts and their administration, and will ensure that all recipients and sub recipients of WisDOT will include the following statement in all financial assistance agreements:

“The Wisconsin Department of Transportation shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any 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 DOT assisted contracts. The recipients DBE Program, as required by 49 CFR part 26 and as approved by 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 Wisconsin Department of Transportation of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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. 2901 et seq.). WisDOT uses a standard agenda for preconstruction meetings that reminds prime and subcontractors of the responsibility to include nondiscrimination language, referencing FHWA 1273 Title VI.”

Contract Assurance

WisDOT ensures that the following clause is placed in every USDOT-assisted contract and subcontract:

“The contractor 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 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.”

Section 26.15: Application for Exemptions or Waivers

WisDOT acknowledges that it can apply for an exemption from any provision of part 26. In the event we apply for an exemption or waiver we will request the exemption in writing from the Office of the Secretary of Transportation. We understand that the Secretary will grant the request only if our application documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established part 26 and that makes our compliance with a specific provision of part 26 impractical.

We further agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. We understand that the Secretary will issue a written response to all exemption requests.

WisDOT acknowledges that we can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. We understand that Program waivers are for the purpose of authorizing us to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. In the event WisDOT elects to seek a program waiver, we will follow the guidelines and procedures outlined in 26.15(b)(1) and (2).

WisDOT agrees that if the USDOT Secretary grants our application, we may administer the DBE program as provided in our proposal, subject to the following conditions:

- DBE eligibility will only be determined using the provisions in subparts D and E of this part
- DBE participation will be counted as provided in §26.49
- There is a reasonable limitation on the duration of our modified program
- Any other conditions the USDOT Secretary makes on the grant of the waiver

WisDOT further understands that the USDOT Secretary may end a program waiver at any time and require WisDOT to comply with part 26 provisions just as the Secretary may also extend the waiver, if s/he determines that all requirements of paragraphs (b) (2) and (3) of Section 26.15 continue to be met.

Section 26.21: DBE Program Updates

In 1983, Congress enacted the first Disadvantaged Business Enterprise (DBE) statutory provision. This provision required the Department to ensure that at least 10% of the funds authorized for the highway and transit Federal financial assistance programs be expended with DBEs. In 1987, Congress re-authorized and amended the statutory DBE program. In the transportation legislation of that year, Congress, among other changes, added women to the groups presumed to be disadvantaged. Since 1987 DOT has established a single DBE goal, encompassing both firms owned by women and minority group members.

WisDOT will continue to carry out this program as long as it is a recipient of USDOT financial assistance. WisDOT will revise its DBE program implementation according to USDOT updates or revisions of the regulations. The current version of 49 CFR Part 26 is dated November 14, 2014.

Submission & Sub-recipient Notifications

WisDOT will submit an updated DBE Program Plan for FHWA review and approval when significant changes occur. All sub-recipients of the funds that WisDOT receives from USDOT will be required to comply with this current, approved WisDOT DBE program plan. Sub-recipients will be notified annually that independent DBE Program Plans are not permissible.

Section 26.23: Policy Statement

POLICY STATEMENT

{Reference 49 CFR Part 26.1, 26.23}

The Wisconsin Department of Transportation has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Wisconsin Department of Transportation has received Federal financial assistance from the United States Department of Transportation, and as a condition of receiving this assistance, the Wisconsin Department of Transportation shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts.

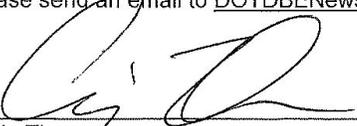
Wisconsin DOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. Wisconsin DOT is committed to the DBE program objectives for all contracts that contain USDOT-assistance or federal funding.

- a) *To ensure nondiscrimination in the award and administration of DOT - assisted contracts;*
- b) *To create a level playing field on which DBE firms can compete fairly for DOT-assisted contracts;*
- c) *To ensure that the DBE Program is narrowly tailored in accordance with applicable law;*
- d) *To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;*
- e) *To help remove barriers to the participation of DBEs in DOT assisted contracts;*
- f) *To promote the use of DBE firms in all types of federally-assisted contracts and procurement activities conducted by recipients.*
- g) *To assist the development of firms that can compete successfully in the market place outside the DBE Program.*

The DBE Program functions within the Office of Business Opportunity and Equity Compliance in the Division of Transportation System Development. The day-to-day operational management of the DBE program is delegated to the Division of Transportation System Development to most effectively align and prioritize the policies, objectives, technical services of the DBE program across regions and divisions responsible for federal contract administration. The Secretary's Office receives DBE compliance reports in bi-weekly meetings and shall allow direct access for DBE issues dependent upon the impact and significance of the compliance issue.

Every state has a DBE Liaison Officer who is responsible for implementing all aspects of the DBE program. At Wisconsin DOT, our DBE Liaison Officer job title is DBE Program Chief. The DBE program is accorded the same level of priority as compliance with all other legal obligations incurred by the Wisconsin Department of Transportation in its financial assistance agreements with the United States Department of Transportation.

Wisconsin Department of Transportation has disseminated this policy statement to the Board of Directors and all sectors of our organization responsible for contract administration. This policy is posted on the [WisDOT DBE Program Webpage](#). If anyone has any questions regarding this policy or would like copies please send an email to DOTDBENewsletter@dot.wi.gov.



Craig Thompson
Secretary-Designee, Wisconsin Department of Transportation

10/9/2020
Date

The signed policy statement is posted on the WisDOT [website](#).

Section 26.25: DBE Liaison Officer (DBELO)

The Secretary acknowledges that the DBELO has independent direct access to the Deputy Secretary in matters relating to DBE program implementation. Practical matters regarding the DBE program are articulated to WisDOT's Chief Engineer, the Division of Transportation System Development (DTSD) Administrator, who will summarize the issue in the Secretary's prescribed briefing format to include potential risks, opportunities, and solutions if necessary.

Within the Department, the Office of Business Opportunity and Equity Compliance (OBOEC) is the catalyst that facilitates and supports equity principles throughout the organization utilizing a proactive interdisciplinary strategy to:

- Promote equity
- Practice inclusion
- Generate opportunity
- Maintain compliance

The Office of Business Opportunity and Equity Compliance is located within DTSD is which consists of four units. The four units are: Title VI, the DBE Office, and Contract Compliance.

The DBE Program is strategically housed in DTSD due to its responsibility for advising the regional offices regarding economic, environmental, social standards and practices while monitoring quality, and assuring compliance with federal and state laws and regulations. Additionally, DTSD is responsible for administration of the federal highway funds WisDOT receives. WisDOT has designated the following individual as our DBE Program Liaison Officer (DBELO):

Madalena Maestri, EdD, DBE Program Chief

Wisconsin Department of Transportation

4822 Madison Yards Way, S508

Madison, WI 53707

Madalena.Maestri@dot.wi.gov

As DBELO, the DBE Program Chief is responsible for implementing all aspects of the DBE program and ensuring that WisDOT complies with all provisions of 49 CFR Part 26 and 23. The DBELO has direct, independent access to the Secretary of the Wisconsin Department of Transportation concerning DBE program matters. The DBELO has a staff of ten employees with additional support from consultants under master contract to the Department. The Contract Compliance Unit monitors prompt payment and other compliance requirements related to payments. In cooperation with the DBE Office, the Compliance team also assists with monitoring and collecting race-neutral DBE participation.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

- Responsible for the overall implementation, administration, and monitoring of WisDOT's DBE Program.
- Gathers and reports statistical data and other information as required by USDOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all divisions within the Department to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes WisDOT's progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the Secretary and the Board of Directors on DBE matters and achievement.
- Chairs DBE Transportation Advisory Committee and DBE Transportation Consultant Advisory Committee.
- Monitors contractor compliance with good faith efforts.
- Provides DBEs with information and assistance in preparing bids, and obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Oversees certification of DBEs according to the criteria set by USDOT and acts as liaison to the Uniform Certification Process in the State of Wisconsin.
- Provides outreach to DBEs and community organizations to advise them of contracting opportunities.
- Oversees maintenance of WisDOT's updated Directory and Interactive Map of certified DBEs.

WisDOT Structure Overview

WisDOT is responsible for planning, building and maintaining Wisconsin's network of state highways and Interstate highway system and supports all modes of transportation. WisDOT is composed of three executive offices and five Divisions which report to the WisDOT Secretary and Deputy Secretary as CEO and COO respectively.

(Review WisDOT & OBOEC Organizational Chart in Attachments at P.42 & 43)

Division of Transportation System Development (DTSD) is divided into Statewide Bureaus and Regional Operations providing uniform direction in planning, design and construction phases of project delivery as well as leadership in the protection of public interests and resources through public and local interactions. DTSD statewide bureaus advise the regional offices regarding engineering, economic, environmental, social standards and practices while monitoring the quality and efficiency of its programs to assure compliance with federal and state laws and regulations.

The day to day operations of the DBE program are housed in DTSD through the **Office of Business Opportunity & Equity Compliance (OBOEC)**. OBOEC is led by a Director whose direct reports are a DBE Program Chief, Title VI Officer, and Contract Compliance Chief. The DBE program is implemented by ten dedicated statewide staff and several consultants under master contract. The full-time, dedicated statewide staff are housed at the central office in Madison and a satellite support service office in Milwaukee. The ten staff members are under the functional oversight of the DBELO and administrative oversight of technical managers in their respective regional locations. The state employment system's work classifications of the DBE staff are Equal Opportunity Specialists, Program & Policy Analysts, two Civil Engineers, and an Information Systems Specialist. OBOEC staff work closely with Bureau of Project Development staff who oversee all elements of bidding and contracting for WisDOT including consultant solicitations and construction lettings.

Division of Transportation Investment Management (DTIM) includes two organizational areas having DBE compliance responsibilities – the Bureau of Transit, Local Roads and Railroads and Harbors and the Bureau of Aeronautics. **The Transit Section** is a unit of the Bureau of Transit, Local Roads, Railroads and Harbors (BTLRRH). The Transit Section manages and administers federal and state transit grant programs used by local governments and non-profit transit agencies to fund public and specialized transit services, purchase vehicles and conduct transit studies. The Transit Section is required to develop and submit a Transit DBE Program Plan to the Federal Transit Administration (FTA) because it receives federal funds exceeding \$250,000 in a federal fiscal year. The Transit DBE Program Plan addresses FTA-specific DBE requirements and reflects the unique components specific to the Transit Section's efforts to administer federal transit funding. The various subrecipients receiving federal transit funds are incorporated into the Transit DBE Program Plan. The Bureau of Aeronautics is responsible for improving aviation safety, developing air transportation facilities and providing aviation information and technical expertise to the public, general aviation airports, stakeholders. The Aeronautics DBE Program Plan addresses FAA-specific DBE requirements and reflects the unique components specific to the Aeronautics Section's efforts to administer federal funding including multiple grant programs

Section 26.27: DBE Financial Institutions

It is the policy of the Wisconsin Department of Transportation to fully investigate the services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions.

We collaborate with the USDOT Small Business Transportation Resource Centers and the Small Business Administration regarding community financing and loan alternatives. DBE staff engage available resources to keep DBE firms on their contracts in an effort to help them fulfill their earnings expectations

The Federal Reserve Board website includes a banking data search that identifies minority-owned banks. WisDOT commits to annually review the website for additional banks that are minority-owned. WisDOT has identified the following institutions as minority owned banks or financial institutions:

Columbia Savings & Loan (African American-owned)
2020 W. Fond Du Lac Ave.
Milwaukee, WI 53205
414-374-0486

DBE Office staff is working with Columbia Savings & Loan to house state funds used for our loan guarantee program that includes \$400,000 of state funds. Wisconsin established the DBE Loan Guarantee Program in 1987 by Wisconsin Act 399, Chapter Trans 404 to help disadvantaged businesses obtain working capital to participate in transportation-related construction prime or sub-contracts with the Wisconsin Department of Transportation (WisDOT).

The Loan Mobilization Program has 3 stages:

Stage I

- Identify the transportation related contract
- Identify eligible needs requirements. Proceeds may only be used to finance accounts receivables arising from performance on a WisDOT contract
- Evaluate part performance eligibility including creating a financing package
- Obtain DBE owner's personal and business credit reports
- Lender's credit analysis of DBE's financial history

Stage II

- Prime contractor notification letter explains the loan and the two-party check requirement; Prime contractor and lender develop a system to verify invoices via phone, email or fax.
- Loan is generally set up as a revolving line of credit. Borrower cannot borrow more than the face value of the line of credit.
- Funds are disbursed upon submission and verification of an invoice on the WisDOT contract.
- Participating lender verifies invoicing before the funds are released.

Stage III

The third stage is the follow-up with lending institutions and DBE firms on a consistent and regular basis until the loan is repaid in full. The lender is asked to submit a monthly loan status and forward concerns to WisDOT DBE Office staff. In the event the lender does not facilitate notification, WisDOT will take the initiative and do the following:

- Follow up involving regular calls to lender on or around the due dates of payments per projected cash flow.
- If any payment problem or delay are noticed, WisDOT initiates internal alerts and follows up with the DBE firm to assess the nature of the problem/delay. The WisDOT DBE office staff follows up with the prime contractor and WisDOT Project Manager to resolve the issue so that the payments resume or a time-stamped corrective action plan can be implemented.

Section 26.29 (a) - (e): Prompt Payment

The Wisconsin Department of Transportation has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from receipt of each payment WisDOT makes to the prime contractor.

Within 10 calendar days of receipt by a contractor of a progress payment for work performed, materials furnished or materials stockpiled by a subcontractor, the contractor shall pay that subcontractor for all work satisfactorily performed and all materials furnished or stockpiled.

(Review Additional Special Provision 4 – Highways link on P.27 and FAA Advisory for Standard Specifications link on P.27)

Monitoring & Enforcement Mechanisms

WisDOT will use other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

1. A DBE firm may report a slow payment to the DBE Program Engineer along with the project leader to mediate payment delays and project level conflicts including DBEs. A DBE consulting firm may also bring payment concerns to the Consultant Services Unit Chief. WisDOT's Bureau of Project Development serves as the primary contact for prompt payment issues from non-DBE firms.
2. Contract Compliance Specialists monitor the payment confirmations in the CRCS system while reviewing and approving certified electronic payrolls. Compliance Specialists use the preconstruction meeting checklist to remind contractors of the prompt payment expectations and timelines. DBE consultant firm payments are monitored by the financial specialists dedicated to CARS.
3. WisDOT posts contract payment information on the Highway Construction Contracting Information (HCCI) website using the Construction Contract Payment Viewing system. All subcontractors can use the system to confirm the date that WisDOT pays the Primes. The link to the system is: <https://wisconsindot.gov/Pages/doing-bus/contractors/contract-pymts/default.aspx>. Consultant firms use the CARS system to track invoices and payments.

Contract Sanctions

If a contractor fails to carry out the DBE program and Title VI nondiscrimination requirements of the contracts, the following sanctions will be assessed depending upon the facts, reasoning, severity, and their responsiveness: termination of contract, withholding payments, assessing sanctions, assessing liquidated damages; and/or suspension/debarment disqualifying the contractor from future bidding.

The aforementioned contract assurances and contract sanctions are included in all contracts that include federal funds.

Assurances and sanctions for contractors are included in Additional Special Provision 3 (ASP 3) of the proposal and contract. Compliance Specialists review subcontracts to confirm the inclusion of the assurance and sanctions. (*Review Attachments Additional Special Provision 3 - link on P.27*)

Assurance and sanctions for consultants are included in the standard provisions/boilerplate language referenced within the cover/signature page of contracts. The types of consultant contracts that include this language are: Construction engineering, Two-party design, Three-party design, Specialty master contract and Local engineering services contract, and Design-Build contracts.

WisDOT includes the following clause in each USDOT-assisted construction prime contract in Additional Special Provision 4:

Payment to First-Tier Subcontractors

Within 10 calendar days of receiving a progress payment for work completed by a subcontractor, pay the subcontractor for that work. The prime contractor may withhold payment to a subcontractor if, within 10 calendar days of receipt of that progress payment, the prime contractor provides written notification to the subcontractor and the department documenting "just cause" for withholding payment.

The prime contractor is not allowed to withhold retainage from payments due subcontractors.

Payment to Lower-Tier Subcontractors

Ensure that subcontracting agreements at all tiers provide prompt payment rights to lower-tier subcontractors that parallel those granted first-tier subcontractors in this provision.

Please see the following for further prompt payment monitoring and enforcement information: Section 26.37; ASP-7 and ASP-9 (links on P.27)

Section 26.31: UCP DBE Directory

The Wisconsin Department of Transportation maintains a directory identifying all firms eligible to participate as DBEs in the State of Wisconsin. The directory lists the firm's contact information, type of work the firm has been certified to perform as a DBE, etc. This directory can be found here: <http://wisconsin.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>. WisDOT also maintains an <https://wisdot.maps.arcgis.com/apps/webappviewer/index.html?id=c7bfb3407c7d4e9dadbf0ccdf1d1cce4> with name, location, and work type of all firms certified to work as DBEs in the state.

Section 26.33: Overconcentration

WisDOT has not identified overconcentration in the types of work that DBEs perform. If the WisDOT determines that DBE firms are overconcentrated in a particular type of work as to unduly burden the opportunity of non-DBE firms who participate in this type of work, we will devise appropriate measures to address the overconcentration.

The measures may include:

- Excluding contract goals related to a particular work type
- The use of incentives, technical assistance, business development programs, mentor/protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specified over-concentrated type of work
- Small business development efforts that identify projects of a certain size that will be available only to businesses of a limited size that would be open to all small firms, not only DBEs

WisDOT will obtain the approval of FHWA for its determination of overconcentration and the measures it intends to devise to address it. To evaluate overconcentration, we:

1. Compare the number of DBEs certified in a NAICS code or work area to the number of non-DBE firms registered with WisDOT to do the same type of work
2. Compare the market share and/or earnings of DBE firms to the market share of non-DBE firms on WisDOT projects
3. Compare the market share and/or earnings of DBE firms to the market share of non-DBE firms in the state, using SBA or other agency data.

Section 26.35: Business Development Programs

WisDOT's DBE Office implements a tiered support service program that meets the needs of the DBE firms servicing Wisconsin's transportation infrastructure system. We have identified goals for the DBE program, including support services, from an industry needs assessment facilitated through stakeholder dialogue and a thriving Mentor-Protégé Program.

DBE Program Services

The core of the DBE Program Support Services uses targeted outreach to engage certified DBE firms in meaningful dialogue about WisDOT opportunities and their business needs. The following represents the tailored workshops we customarily provide:

1. DBE Orientations
2. WisDOT Contracting Opportunities
3. Common Pitfalls in Government Contracting
4. Performance Problem Mediation
5. Small Business Network Training

Tier 1: Services for Experienced Firms

The DBE Program Engineer reviews DBE Commitment forms for each contract. Periodically, the Engineer contacts firms to discuss their plan to execute the contract. He or she asks for their start date, workforce they will use, accountant name, estimator's role, copy of subcontract, and projected needs or shortfalls. The answers provide insight into the firm's professional service needs so that the DBE Office can dispatch the most appropriate DBE support service consultant as applicable.

Tier 2: Services for Novice & Inactive DBE Firms

DBE firms are required to complete a Capacity Building Business Assessment (CBBA) to be eligible for any support service. Our consultants conduct business assessments of DBE firms which will prompt a recommendation, referral, or a corrective action plan highlighting the services that our DBE Support Service Program provides. These assessments are also used to plan training workshops for the following year.

After this step is completed for a given DBE firm, the consultants provide a time/cost summary for the firm's needs that cannot be addressed through a workshop. WisDOT prioritizes the requests/needs and evaluates whether the cost is reasonable return on investment for the training year.

(Review Attachments for Business Development Program at P.45)

Section 26.37: Monitoring and Enforcement Mechanisms

WisDOT implements a monitoring and enforcement program to ensure that work committed to DBEs prior to contract award and following contract execution, such as a modification to the contract, to ensure that work committed to a DBE is actually performed by the DBE. The DBE Program Engineer reviews, evaluates and signs all DBE commitments submitted by prime contractors to fulfill the contract DBE goal per the DBE Commitment Form DT1506. WisDOT uses the DT 1506 and Attachment A to document the commitment. The signed DBE commitments are monitored and enforced following execution of the contract. Modifications to the DBE commitment must be justified by the Department's project staff, in writing, and approved by the DBE Program Engineer per ASP 3 (see link P.27).

The DBE Program Engineer has access to all consultant contracts that include federal funds. He reviews the electronic submission of the DBE commitment forms received from the prime consultant and compares its work type and amount to the subcontracts submitted to WisDOT's contract administration office.

Reporting Fraudulent Conduct

WisDOT will bring any false, fraudulent, or dishonest conduct in connection with the program to the attention of the US Department of Transportation so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts.

Civil Rights Compliance System (CRCS)- Tracking & Monitoring

WisDOT utilizes a software application (CRCS) for payment tracking and labor compliance management for all contractors. This system is designed to facilitate compliance with 49 CFR Part 26.37.

The system contains these major functionalities:

1. Payment Tracking – tracking and reporting actual payment transactions by prime and subcontractors.
2. Labor Compliance Management – provides electronic certified payroll and fringe benefit reporting by prime contractors and all subcontractors.
3. Registration – confirms contact information is current and allows better goal-setting data. This system has some limited interactions with the Trns*Port database which contractors use to bid on projects. Registrations in this system flow into Trns*Port. However, payments cannot flow directly from Trns*Port.
4. Disadvantaged Business Enterprise Management – allows the four Unified Certification Program partners to share a database of DBE firms.

Note: In 2020, WisDOT began transitioning to AASHTOWare Project (AWP). Once fully implemented, this platform will replace CRCS for tracking and monitoring construction contracts.

Contract Administration and Reporting System (CARS)- Tracking & Monitoring

CARS is a web-based application that the Consultant Services Unit uses to manage and support consultant contracting. CARS data includes all vendors, the engineer roster, and firms who competed for WisDOT professional service contract opportunities. CARS software is used by both WisDOT and all firms competing for WisDOT professional service contracts as it allows the Department to perform electronic invoicing and evaluations of contracts and prompt payment.

Running Tally

WisDOT compiles a running tally of actual DBE attainment compared to DBE commitments. We track federal funds, contract and DBE commitments using CRCS to compare construction commitments to actual payments on a monthly basis. The Consultant Services Unit utilizes CARS to track and monitor DBE commitments and payments on a monthly basis. Consultant payment information is reported to the DBE Office twice a year for inclusion in the Uniform Report.

Monitoring Payments to DBEs

Our project tracking system (AWP) contains a portion of the relevant contract data for completing the DBE Uniform Report. Requests to Sublet identify all subcontractors on a given project, their type of work, and amount of subcontract. The DBE firm's NAICS code, ethnicity or gender are also within the AWP system. Contracts and DBE commitments are currently loaded into both AWP and CRCS, with payment monitoring continuing in CRCS through fall 2021.

Special Provisions 7 and 9 require primes to electronically report payments to DBE firms utilizing CRCS at this time. The Civil Rights Compliance System captures certified payrolls, payments made to DBE subcontractors, and requires DBE firms to confirm receipt of payments from its respective tier of contractor. This information will continue to be required in AWP.

(Review Section 26.55; Attachments for Additional Special Provisions 7 & 9 – links on P.27; and CUF Attachment at P.31)

Section 26.39: Fostering Small Business Participation

WisDOT's small business initiative (SBI) facilitates competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation. This includes removing unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

We will actively implement the program elements to foster small business participation. WisDOT approached the plan development in three stages:

1. Research and Inventory
 - a. Review current contract sizes
 - b. Review types of contracts in which DBE's successfully perform
 - c. Review services and supplies that support WisDOT
 - d. Review existing policies for potential limitations on small business participation
2. Evaluate and Recommend
 - a. Assess existing practices
 - b. Review how WisDOT fosters small business participation
 - c. Identify opportunities that align with the goals of the small business initiative
3. Vet the Systems and Proposals
 - a. Data collection
 - b. Report development
 - c. Stakeholder review
 - d. Leadership review
 - e. Strategic decision-making based on benefit and risk analysis

Implementation

Our SBI plan was approved July 9, 2012 and implemented immediately recognizing that some of our strategies are linear, others are cyclical and unfolding.

The basic requirements for SBI participants are:

- Owner (s) Personal Net Worth cannot exceed 1.32 million
- Owner (s) Statement of Non-Collusion

Small Business size is based on the SBA’s size thresholds for industries primarily purchased by WisDOT- specialty trade contractors and engineering services. Small Business Size: \$14 million or less.

We do not have funding for additional staffing of a separate certification program thus we opted to use a proven, existing certification whose goals are known and consistent with the DBE program spirit and intent:

- SBA Hub Zone certified OR
- DBE certified

Section 26.45: Overall DBE Goals

WisDOT has established and operates a Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.” WisDOT sets overall annual goals for DBE participation in DOT-assisted contracts funded with federal-aid highway funds, federal transit funds, and federal aviation funds. WisDOT sets a three-year annual goal for each funding area (highway, transit, and aviation).

Annual Goal Submission Schedule

In the Annual Goal Submission document, WisDOT submits our overall annual DBE goals for three federal fiscal years. WisDOT submits an overall DBE goal calculation for each mode applicable to modal federal-aid. Separate submissions of three-year goals have been made to the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA) for their related programs. The majority of WisDOT’s funding is from the Federal Highway Administration (FHWA) highway funds.

The process used to establish the goals are set forth in 49 CFR Part 26, and in the document provided by FHWA, *Tips for Goal Setting in the DBE Program*. It is noted that WisDOT is on a different three-year cycle for FAA, FTA, and FHWA DBE goal submissions. The timetable is as follows.

	Current Annual Goal Submission Under New 3-Year Rule	Current DBE Goal	Inclusive Fiscal Years	Next Due Date
FHWA	August 1, 2020	12.41%	FFY 2021 – FFY 2023	Aug 1, 2023
FTA	August 1, 2019	1.85%	FFY 2020– FFY 2022	Aug 1, 2021
FAA <i>Block Grant Airports</i>	August 1, 2019	4.8%	FFY 2020– FFY 2022	Aug 1, 2021

Section 26.47: Shortfall Analysis of Overall Annual DBE Goal

To administer our DBE Program in good faith, WisDOT will submit an Overall Annual DBE Goal plan and fully implement steps to meet the approved plan in the spirit and intent of 49 CFR part 26.

If WisDOT’s Uniform Report of Awards or Commitments and Payments does not meet the overall annual goal at the end of a given fiscal year, WisDOT will comply with the following requirements to continue operating the DBE program in good faith. We will use the following process to analyze the reasons for our shortfall.

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
3. Submit a corrective action plan to FHWA within 90 days of the end of the fiscal year including

the analysis, benchmarks and measures to facilitate the achievement of the approved annual goal in the preceding FFY.

Section 26.51: Contract Goals

The Wisconsin Department will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the Federal share of a USDOT-assisted contract. The Wisconsin Department of Transportation will use contract goals to meet any portion of the overall goal. WisDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through race neutral means.

We will establish contract goals only on USDOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract. (E.g. type and location of work, availability of DBEs to perform the particular type of work).

Section 26.53: Good Faith Effort Guidance

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

WisDOT must determine if a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts. We will ensure that all information is complete and accurate and adequately documents the bidder/offerors good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted

WisDOT treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness – and all bidders will submit DBE commitment and good faith effort documentation.

Responsiveness

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information under sealed bid procedures and prior to posting of bid results:

1. The names and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE will perform
3. The dollar amount of the work to be performed by each DBE firm participating as a subcontractor
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

The obligation of the bidder is to make good faith efforts. The bidder can demonstrate that it is done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to part 26, and in ASP 3, attached. The DBE Office is responsible for determining whether a bidder who has not met the contract goal has documented adequate good faith efforts to be regarded as responsive. We will ensure that all information is complete and accurate, adequately documenting the bidders' good faith efforts before WisDOT awards the contract to the bidder.

Administrative Reconsideration

Within 5 Business days of being informed by WisDOT that the bidder has not documented sufficient good faith efforts, the bidder may request an administrative reconsideration. Additional information for bidders is provided in ASP 3. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror may request to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

Obligation to provide DBE subcontracts

Prime contractors must make all DBE subcontracts available upon WisDOT's request. All contractors are reminded of this obligation at preconstruction meetings by Contract Compliance Specialists.

DBE Commitment Modification

Any changes or modifications to the contract once executed are considered contract modifications and as such require a change order. In addition, the DBE office must provide consent for reduction, termination, or replacement of subcontractors approved on the DBE Commitment in advance of the modification for the prime contractor to receive payment for work or supplies. Additions to the DBE commitment do not require advance notification of the DBE office. Contractors must submit an Attachment A (to form DT1506 Commitment to Subcontract to DBE) in order for DBE credit to be verified and recorded as race-neutral attainment.

Termination, Replacement, Substitution of DBEs

WisDOT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances: See ASP 3, *DBE Commitment Modification Policy*. (Review Attachments: *Additional Special Provision 3 link at P.27*)

Section 26.55: DBE Credit

When a DBE participates in a contract, WisDOT will count only the value of the work actually performed by the DBE for DBE credit. DBE participation toward overall and contract goals will be counted per 49 CFR 26.55 (f) and (g). Specific information related to credit award is provided in ASP 3.

- DBE credit will not be counted toward the DBE goal if the firm is not DBE certified at the time of award per 49 CFR Part 26.55(f).
- Only certified DBE firms are entered into the DBE payment tracking system that is utilized to track DBE credit.
- If a firm is decertified after award, prior to or during the execution of a contract, that DBE firm's participation will not count toward any DBE goals. We will subtract the balance owed for the work from the contract record and will not report the participation on the DBE Uniform report. If a DBE is decertified while performing on a contract, we will only count the portion of the work performed

by the DBE prior to the date on the decertification letter toward the contract goal. The work of the former DBE firm following decertification will not count toward the overall annual goal attainment on the DBE Uniform Report.

- If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, we will count the DBE's participation on that contract toward overall and contract goals per 26.87(j)(3).

Joint Ventures that include DBE firms will be evaluated by the DBE Program Engineer and Contract Administration staff. Contract Administration staff will confirm the roles of each partner and evaluate qualifications, financial status and viability. The DBE Program Engineer will outline the process for evaluating the appropriate assignment of DBE credit clearly stating the certified work types/areas and NAICS codes and the work to be controlled and managed by the DBE.

Counting DBE Prime for credit

A DBE prime contractor must submit a DBE commitment for the amount of the work to be performed by DBE certified firms. We review the DBE utilization plan including the work to be performed by the DBE prime and its approved subcontractors. Only the work being performed by DBE's in their certified work areas, for both the DBE prime as well as any of its DBE subcontractors, will be counted for DBE credit. The DBE prime work will be documented as neutral achievement toward the overall annual DBE goal.

Credit for Supplies

The department will give 100% credit toward the DBE goal if the DBE is a manufacturer or fabricator of their materials or supplies. The department will give 60% credit or brokerage fee set by industry's standard toward the DBE goal if the DBE is only a supplier of these materials or supplies. Drop shipment by a supplier will earn a 10% DBE credit. It is the Prime Contractor's responsibility to use the UCP Directory to confirm that the DBE is considered a supplier or a manufacturer before listing them on this form. WisDOT will adjust the credit, if required, when approving the form.

Credit for Trucking

DBE crediting for the trucking industry is achieved in the following manner:

- a. A minimum of one truck owned by the DBE must be used on the contract
- b. 100% DBE credit is given for DBE-owned trucks and trucks leased from another DBE
- c. Trucks leased by a DBE from non-DBE firms will be given DBE credit of 10% of the subcontract value

All trucks used for credit must be listed and approved on the DBE firm's Schedule of Owned/Leased Vehicles for DBE Credit and/or a WisDOT approved trucking utilization plan. View [Trucking Utilization Policy](#).

Commercially Useful Function

Commercially Useful Function (CUF) of DBE firms work is assessed on a 'project by project' basis using the format provided by the DBE Office. The first step in the CUF process is evaluation of the DBE Commitment (DT1506) submitted with the bid. The DBE Program Engineer verifies that the DBEs presented on the commitment are certified as DBEs in the work areas assigned on the DT1506. Following contract execution, WisDOT implements a monitoring and enforcement program that includes written certification that we have monitored work sites ensuring that DBE firms are performing a commercially useful function by completing the work committed to on the DT1506. Construction site monitoring is conducted by Project Engineers/Project Leaders who record their findings on a CUF monitoring form.

Per 49 CFR 26.55 A DBE performs a commercially useful function (CUF) when the DBE is responsible for execution of their work under the contract and the DBE is carrying out its responsibilities by actually performing, managing, and supervising their work. A DBE firm does not perform a CUF if the DBE 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 addition to construction site monitoring, Compliance Specialists review DBE commitments and payments for each construction contract on a monthly basis. A payment to a DBE is another indication

that a CUF was performed as the Project Leader will only approve payments based on items assigned to subcontractors specifically. When an additional payment to a DBE appears in the tracking system, Compliance Specialists contact the prime to request an Attachment A for the amount of participation that exceeds the commitment. The DBE Program Engineer then verifies the commitment to establish if DBE credit is permissible.

In order to complete CUF monitoring on consultant firms, we must review contracts that are ongoing but were awarded in previous years in addition to the current year's awards. WisDOT will monitor CUF through in person interviews with representatives from the consultant firm and review all current WisDOT projects underway. Compliance Specialists will conduct CUF interviews with Project Leaders on job sites if those Project Leaders are employees of DBE consultant firms. Consultant Unit staff monitor payments related to the DBE contract and subcontracts utilizing the CARS (Contract Administration & Reporting System).

There is another level of CUF monitoring applied to manufacturers, fabricators, and suppliers. The DBE Program Engineer verifies that the credit submitted by the prime contractor is appropriate to the type of business, e.g. DBE manufacturers and fabricators receive 100% credit, while suppliers receive 60%. Additional information may be requested to include purchase orders, documentation of estimated delivery date or completion of manufacture, drop shipment or delivery records from the supplier's warehouse. There will be periodic general audit reviews of material suppliers at their places of business.

Finally, we have an escalation process to address red flags identified in the field, during interviews, or by the DBE Program Engineer. The process includes communications with the project team, prime, and DBE firm to gather information and resolve the issue(s) or take further action.

(See Attachments for CUF Program Information at P.31)

Sections 26.61 & 26.63: Certification Standards

WisDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all [certification eligibility standards](#). We will make our certification decisions based on the facts as a whole. The WisDOT DBE Program has attained national prominence for its uncompromising application of the USDOT certification standards set forth in 49 CFR Part 26.

In compliance with 49 CFR Part 26, WisDOT entered into a Unified Certification Program Agreement with all USDOT recipients in the state of Wisconsin. The WI UCP program became operational in 2003, resulting in a "One- Stop" certification system for all USDOT-funded contracts let in the state. Consistent with the requirements of 49 CFR Part 26.83, application materials include analysis of the following:

Sections 26.65: Business size

Business Size Determinations

The DBE program requires that a firm must be an existing small business, as defined by Small Business Administration (SBA) standards using the North American Industry Classification System (NAICS) codes appropriate to the type(s) of work the firm seeks to perform on WisDOT contracts.

Section 26.67: Social & Economic Disadvantage

Social

WisDOT will presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities listed in the current Transportation Bill, 49 CFR part 26, and by the SBA, are socially disadvantaged individuals.

Economic

WisDOT's DBE program requires that all disadvantaged owners that comprise the 51% company ownership applying for certification must have personal net worth that does not exceed \$1.32M.

Applicants submit a signed, notarized certification that each presumptively socially disadvantaged owner is, in fact, socially and economically disadvantaged.

Section 26.69: Ownership

The DBE program requires that socially and economically disadvantaged owners must own at least 51% of the firm.

Section 26.71: Control of Business

The DBE program requires that socially and economically disadvantaged owners control the management, policy, and operations of the company.

In determining whether socially and economically disadvantaged owners control a firm, WISDOT will consider all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one in which the viability of the business does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, WISDOT scrutinizes relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. WISDOT considers whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

WISDOT examines the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm. In considering factors related to the independence of a potential DBE firm, WISDOT considers the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

The socially and economically disadvantaged owners must possess 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 operations. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and

policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, WISDOT will not deny certification solely on the ground that the person lacks the license or credential. However, WISDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm. Wisconsin law does not require the owner of a professional services firm to hold the license for the firm.

WISDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. WISDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

WISDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. The specific types of work granted are narrowly tailored to the SBA NAICS codes found on the SBA webpage and descriptions found on the Census Bureau webpage and based on the specific experience of the qualifying owners.

To become certified in an additional type of work, the firm must demonstrate to WISDOT that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. WISDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but WISDOT will verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described via work codes that include the most specific available NAICS code for that type of work. Additionally, the firm's work type or types are listed in the UCP DBE Directory. Firms and WISDOT must check carefully to make sure that the work codes are kept up-to date and accurately reflect work which WISDOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information needed to make an appropriate work code designation. If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that WISDOT, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified.

Section 26.73: Other Certification Requirements "No-Change Affidavits" and Notices of Change

We require DBEs to submit an Annual No-Change Affidavit and documentation of the firm's annual gross receipts. WISDOT notifies all currently certified DBE firms of these obligations one month before their DBE certification anniversary date. The notification informs DBEs that the owners must affirm that they continue to meet all regulatory requirements of Part 26, including personal net worth. If a firm's owner knows or should know that he or she, or the firm, fails to meet an eligibility requirement they have an obligation to submit a notice of change to the DBE Office within 30 days of the change.

The main text of the no-change affidavit is as follows:

I swear (or affirm) that there have been no changes in circumstances of [name of DBE] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [name of DBE] application for certification, except for any changes about which I have provided written notice to Wisconsin Department of Transportation under § 26.83(i). [Name of DBE] meets the Small Business Administration (SBA) criteria for being a small business concern and [Name of DBE] average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed \$23.98 million. [Gross receipts will be adjusted to not exceed \$26.29 million as of January 13, 2021.]

Section 26.81: Unified Certification Program

In compliance with 49 CFR Part 26, WisDOT entered into a Unified Certification Program Agreement with all USDOT recipients in the state of Wisconsin. The Unified Certification Program (UCP) comprises other certifying agencies in Milwaukee County, Dane County and the City of Madison. The UCP became operational in 2003, resulting in a “one stop” certification system for all USDOT assisted contracts in the state. The WI UCP meets all of the requirements of this section. The guiding documents for the Wisconsin UCP are the UCP Master Agreement and the UCP Implementation & Operating Agreement that provide mutually compliant guidance on implementation of the USDOT DBE program in the state of Wisconsin. The UCP partner Directors meet quarterly and the full group including program managers and certification specialists/analysts meet twice a year.

Section 26.83: Procedures for Certification Decision

Certification of Wisconsin-based firms

In-state applicants should submit their DBE applications and supporting documentation to the regional statewide transportation office that is located closest to their company’s main office. Upon receipt of a completed application at WisDOT, an initial desk audit of the documentation is completed by a Certification Intake Specialist, noting any missing documentation from the document checklist. The applicant is contacted to request additional materials if applicable and an on-site visit is scheduled at the applicant’s place of business. If the Uniform Application Form or the Personal Financial Statement were not submitted, an on-site interview is not scheduled until those items are received.

Following the on-site visit and write-up, the certification application file is forwarded to the Certification Analyst for processing and review. The certification application packet consists of a certification application, additional documentation or forms, the onsite review write-up, and a statement of personal net worth.

The Certification Analyst reviews the application materials for completeness. If any additional information is required, a formal written request is made to the DBE applicant. The certification application is then evaluated to determine whether the DBE applicant is eligible for certification according to 49 CFR Part 26. If certification eligibility concerns remain after a thorough review of a certification application, then the DBE applicant is sent a Notice of Intent to Deny Certification letter. In this letter, the eligibility concerns of WisDOT are enumerated.

Applicants are given a 21-day time period in which to respond to WisDOT’s concerns and the applicant may request an informal hearing. If the applicant fails to respond to the concerns within this time period, a Denial of Certification letter is issued.

An applicant who is denied certification may appeal WisDOT’s decision to USDOT.

Section 26.85: Interstate Certification

WisDOT is committed to compliance with the out-of-state application processing requirements of 49 CFR Part 26. When a firm currently certified in its home state (“State A”) applies to another state (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. WisDOT (and the WI UCP) decided to strengthen this approach to processing DBE interstate application. WisDOT follows the procedures set forth in Section 26.85.

WisDOT requests a copy of the applicant's original application to the home state, any corresponding documents submitted, and the onsite review completed by the home state. If there are no eligibility issues, the applicant will be issued a certification approval letter. In this letter, the DBE owner is informed of the NAICS code work areas in which he/she may perform work on a WI UCP contract for DBE credit.

In addition, the DBE applicant is listed in the WisDOT DBE Directory according to NAICS code and type of work she or he may perform for DBE credit.

If there is good cause to question that the applicant's certification is erroneous, WisDOT will notify the applicant of our specific concerns within 60 days of receipt of the application. The firm has an opportunity to respond and discuss WisDOT's decision and their eligibility. A denial from WisDOT is appealable by the applicant to USDOT.

Section 26.87: Removal of DBE Eligibility

Any person may file a written complaint with WisDOT alleging that a DBE certified firm is ineligible for certification, specifying the alleged reasons for the firm's ineligibility. WisDOT will protect the confidentiality of complainants' identities as required by the DBE regulations.

WisDOT reviews the firm's records, any material provided by the firm and the complainant, and other available information. WisDOT may request additional information from the firm or conduct additional investigations as necessary.

If WisDOT determines that there is reasonable cause to believe that the firm is ineligible for DBE certification, the firm is contacted in writing and informed that WisDOT proposes removal of DBE eligibility and the reasons for the proposed action. If WisDOT determines that reasonable cause does not exist to remove DBE certification, the complainant and the DBE firm are notified in writing of this determination. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each decision is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to WisDOT's attention, including failure to submit an Annual No-Change Affidavit, WisDOT determines that there is reasonable cause to believe that a certified firm is ineligible, WisDOT will provide written notice of Intent to Decertify setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based. The DBE firm has the option to respond in writing to the Notice of Intent to Decertify.

In the event WisDOT proposes removal of DBE certification, we will follow procedures listed in Section 26.87. To ensure separation of functions in the decertification process, WisDOT uses a panel of 5 members that serve as the decision-maker in informal decertification hearings. WisDOT and the UCP have established an administrative firewall to ensure that the same official or office staff involved in decertification decisions will not participate in the decertification informal hearing decision-making, including the decision to initiate such a proceeding.

Additionally, if the concerned operating administration (FHWA, FTA, FAA) determines that information in certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm WisDOT certified does not meet the eligibility criteria, the concerned operating administration may direct WisDOT to initiate a proceeding to remove the firm's certification.

UCP Informal Hearing for Decertification Decisions

If the certified firm responds to the Notice of Intent to Decertify, a member of the certification team reviews the response and the relevant information. If concerns remain, the DBE firm is sent an Informal Hearing Opportunity letter. An informal hearing is conducted by the UCP Informal Hearing panel consisting of representatives from a UCP member's legal office, a Subject Matter Expert, a Panel Chairperson from a UCP agency and two UCP members from agencies not proposing the

decertification action.

The purpose of the hearing is to provide the DBE firm a full and fair opportunity to address the certification eligibility concerns raised in the Intent to Decertify letter. The hearing is recorded and notes taken. During the hearing additional information or documentation may be requested from the certified firm. Responses to the request for information must be received within 30 days from the date of the information request letter. After the hearing, or after additional information requested is received, the panel will render a decision to the WI UCP agency that brought the case. The Chairperson of the panel will issue a letter of the panel's findings to the firm. If the findings indicate decertification, the letter will inform the firm's owner of the reasons for decertification and the decision appeal procedures to the United States Department of Transportation (USDOT). If the panel's decision is to overturn proposed decertification, the panel Chairperson will notify the firm in writing that the firm remains a certified DBE.

Section 26.88: Suspension of Certification

WisDOT will suspend a DBE's certification without adhering to the requirements for an informal hearing when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. WisDOT may suspend a DBE's certification without adhering to the informal hearing requirements when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify WisDOT or the WI UCP in writing of any material change in circumstances as required.

In order to determine the adequacy of the evidence to issue a certification suspension, WisDOT considers all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

Section 26.91: Certification Appeal Decisions & Removal

USDOT Appeal of Certification Denial

A DBE applicant who is denied certification or a certified DBE firm that is decertified may appeal the decision to USDOT within 180 days of the date of the certification decision. When deciding an appeal, USDOT will request all documentation used in making a certification decision including transcripts of an informal hearing. The United States Department of Transportation (USDOT) may affirm or reverse the decision of WisDOT. A DBE applicant that is denied certification by both WisDOT and USDOT may appeal the decision to District Court.

Any firm or complainant may appeal a WisDOT DBE certification decision to USDOT. Such appeals must be in writing and sent to: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

WisDOT will promptly implement any USDOT certification appeal decision affecting the eligibility of certified DBEs or applicants for USDOT-assisted contracting (e.g. certify a firm if USDOT has determined that the denial of the application or decertification decision was in error.) In addition, if the concerned operating administration (FHWA, FAA, FTA) determines that information in certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm WisDOT certified does not meet the eligibility criteria, the concerned operating administration may direct WisDOT to initiate a proceeding to remove the firm's certification.

In the event we propose to remove a DBE's certification, we will follow procedures required by section 26.87. To ensure separation of functions in the decertification process, WisDOT uses a panel of 5 members that serve as the decision-maker in decertification informal hearings. WisDOT and the UCP have established an administrative "firewall" to ensure that the same official or office staff involved in decertification decisions will not participated in the decertification informal hearing decision-making against the firm (including the decision to initiate such a proceeding).

Appeals due to Fraud

WisDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the DBE program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal proceeding, referral to the DOT Inspector General, action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in this section. WisDOT will consider similar actions under our own legal authorities; including responsibility determination in future contracts.

Section 26.109: Information, Confidentiality, Cooperation

WisDOT safeguards information disclosure to third parties that may reasonably be regarded as confidential business information, consistent with federal, state and local law. Notwithstanding any contrary provisions of state or local law, WisDOT will not release personal financial information submitted in response to the personal net worth requirements to a third party (other than USDOT) without the written consent of the submitter.

ATTACHMENTS

1. DBE Program Plan Glossary – Page 28-30
2. CUF Monitoring Information – Page 31-41
3. WisDOT Organizational Structure – Page 42
4. OBOEC Organizational Structure – Page 43
5. Uniform Report – Page 44
6. Business Development Program – Page 45-47
7. Mentor-Protégé Program – Page 48-65
8. UCP Operating Agreement – Page 66-80

Links:

1. [Additional Special Provisions](#) – Highways
2. [FAA Advisory Circular – Standard Specifications for Construction of Airports](#)
3. [DBE Program Eligibility Requirements](#)
 - a. Includes Uniform Application for Certification
 - b. PNW Statement
4. [DBE Program Information – Highways](#)
5. [DBE Program Information - Transit](#)
6. [DBE Program Information - Aeronautics](#)
7. [Contracting with DBEs at WisDOT](#)
8. [UCP DBE Directory](#)
9. [UCP DBE Directory – Interactive Map](#)
10. [WisDOT Forms for Contractors](#)
11. [Trucking Utilization](#)
12. [Labor, Wage, & EEO Information](#)

DBE Program Plan Glossary

AASHTO: American Association of State Highway and Transportation Officials. AASHTO is a standards setting body which publishes specifications, test protocols and guidelines used in highway design and construction throughout the United States.

AASHTOWare Project CRL: Civil Rights and Labor Management component of the AASHTOWare Project Software Suite. A web-based compliance system managed by InfoTech that processes all data required to efficiently administer external compliance for transportation agencies and contractors. The software processes contractor payrolls, wage decisions, Disadvantaged Business Enterprise (DBE) certification and commitments, vendor data management, On-the-Job Trainees tracking and more.

AASHTOWare Project Software Suites: A high value support during every phase of construction. AASHTOWare Project Software Suite enables management of every facet of the project throughout the entire contract and construction cycle; Modules cover functional areas including: Civil Rights and Labor management; Cost Estimating; Contract Letting (Proposal Preparation, Electronic Bidding, Pre-Award analysis); Contract administration; Construction & Materials management; Contract analysis/decision support. The complete Suite creates and maintains a consistent, integrated view of the contract process during each phase.

Advertisement: Notice to contractors posted on our website

ASP: Additional Special Provision Additional Special Provisions are written directions and requirements applicable for a specific project not otherwise detailed in the Standard Specifications for construction. Provisions can include construction start dates, completion dates, traffic control, DBE participation, and new hire and apprenticeship requirements.

Aspirational Labor Goal: A goal set by labor subcommittees to monitor the inclusion of minorities and women on highway construction work. Usually higher than or equal to the DOL labor goal but is not enforceable.

Award: The department's acceptance of a bid.

Bid: Bid proposal documentation.

Bidder: An Individual, Partnership, Joint Venture, Corporation, Limited Liability Company (LLC), Limited Liability Partnership (LLP), or a combination of any or all jointly, submitting a proposal (bid) for the work advertised in the invitation for bids, acting directly or through a duly authorized representative.

Bid Express: An Internet Bidding service provided by Info Tech Inc that allows contractors to submit their bids on-line. It is a two-way service, publishing bid-related information from agencies to the bidding community, and allowing online, secure bid submission from the bidding community to the agency.

Bid Letting: The process when sealed proposals are submitted to WisDOT, opened on a scheduled Let Date in an open forum, and reviewed for the lowest bidder.

Business day: Every day the calendar shows, except Saturdays, Sundays, and department-specified holidays.

Calendar day: Every day the calendar shows, including Saturdays, Sundays, and department-specified holidays.

CMM: Construction and Materials Manual

Construction limits: The limits of grading or other work generally defined by slope stakes offset from the actual slope intercepts or limits of work.

Consulting firm: The individual, partnership, joint ventures,

corporation, or agency contracted by the department to act directly or as a duly authorized construction representative providing services for the department.

Contract: The written agreement between the department and the contractor setting forth the obligations of the parties to the contract, including, but not limited to, performance of the work, furnishing of labor and materials, and basis of payment.

Contract bond: The department-approved form of security, executed by the contractor and the contractor's surety or sureties, guaranteeing the performance of the contract work, completion of the contract requirements, and the payment of claims

Contract change order: A written order or authorization the engineer executes covering work not otherwise provided for in the contract, revisions in or amendments to the contract, or conditions specifically prescribed in the specifications as requiring contract change orders. The change order document becomes a part of the contract when executed by the department.

Contract modification: Any change to the contract made after it is executed, including but not limited to, the following: contract change order, supplemental contract agreement, administrative change adding a non-bid item, a general administrative change.

Contractor: The Individual, Partnership, Joint Venture, Corporation, Limited Liability Company, Limited Liability Partnership, or Agency undertaking the performance of the work under the terms of the contract and acting directly or through a duly authorized representative.

Contract time: The number of calendar or working days shown in the proposal representing the time allowed for the completion of the work contemplated in the contract.

CRCS (Civil Rights Compliance System): WisDOT's web-based software system for payment tracking, labor compliance management and the DBE Directory for the Uniform Certification Program. It was designed to fulfill and streamline various federal and state reporting and monitoring requirements.

DBE: Disadvantaged Business Enterprise is a small business that is at least 51% owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51% of the stock is owned by one or more socially and economically disadvantaged individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DBE Goal: Overall, annual DBE goal is the percentage of achievement WisDOT has projected to attain for construction and consultant contracts based on federal funds allocated, project types, and ready, willing, and able DBE firms. The contract level DBE goal is set on projects with federal funding depending on the sub-contractable opportunities available.

Deputy Secretary: Chief Operating Officer of the Wisconsin Department of Transportation

EPA: United States Environmental Protection Agency

EA (Environmental Assessment): A study of land to determine any unique environmental attributes, considering everything from endangered species to existing hazardous waste to historical significance. Depending on the findings of an EA, an Environmental Impact Statement may or may not be needed.

EIS (Environmental Impact Statement): An analysis of the potential effects on the natural environment of a project such as a building development, mining operation, or factory.

Engineer's Estimate: WisDOT's estimate of what a project will cost to construct. This estimate is prepared using the final plan and proposal. It is compared with the bids received to determine if the project should be awarded. The Engineer's Estimate is not available to the public (by statute) until after the project is awarded.

Equal Employment Opportunity (EEO): The EEO program requires a workplace to be free from discrimination, harassment and violence. WisDOT is responsible for ensuring equal opportunity for employment in the construction trades on state and federally funded projects regardless of race, gender, ethnicity, sexual orientation, age, religion, marital status and status with regard to public assistance per FHWA 1273. The EEO program requires contractors to actively recruit women and minority applicants for employment in accordance with federal and state EEO laws and WisDOT policies.

Federal Assisted Contracts: Any contract between a recipient and a contractor or a recipient and a lessee that is paid for in whole or in part with USDOT financial assistance

FHWA (Federal Highway Administration): FHWA is a major agency of the U.S. DOT. FHWA is charged with the broad responsibility of ensuring that America's roads and highways continue to be the safest and most technologically up-to-date. The annual budget of more than \$30 billion is funded by fuel and motor vehicle excise taxes.

Force account: A method of payment based on the cost of labor, equipment, materials furnished, and consideration for overhead and profit

Good Faith Effort: Required demonstration of prime contractor's efforts to meet the DBE goal either by meeting the goal, or by documenting adequate efforts to meet the goal while not successfully meeting it. A contract with federal funding and a DBE goal cannot be awarded until the DBE Office certifies good faith effort.

Goal Setting: The method by which to set DBE goals on a project by analyzing data on DBEs capacity to perform and the complexity of the work elements. Contractors are required to make a *Good Faith Effort* to achieve the DBE goal.

HCCI (Highway Construction Contract Information) website: The Bureau of Highway Construction maintains the HCCI website providing information on bidding and highway construction in Wisconsin, the DBE Program, and Economic Recovery.
<http://wisconsindot.gov/Pages/doing-bus/contractors/hcci/default.aspx>

ITS: Intelligent Transportation Systems

Joint Venture: Joint Venture is an entity formed between two or more parties to undertake economic activity together. The parties agree to create a new entity by both contributing equity, and they then share in the revenues, expenses, and control of the enterprise

Labor Goal: Based on Executive Order 11246- Equal Employment Opportunity the United States Department of Labor (USDOL) established labor goals for the inclusion of minorities and women in the construction industry. For example, the USDOL goal for women is 6.9% of all work hours on a project. Minority goals vary by county. On projects over \$10,000 contractors must demonstrate good faith efforts to meet their affirmative action goals.

Mega Projects: Mega projects are projects with an estimated total cost of at least \$1 billion or projects approaching \$1 billion with a high level of interest by the public. Other major criteria are projects lasting at least two years in duration, substantial number of hires, and economic impact on the community.

Mentor Protégé Agreement: A Mentor-Protégé agreement is designed to encourage approved Mentors to provide various forms of assistance to eligible DBEs as Protégés. The purpose of the Mentor-Protégé relationship

is to enhance the capabilities of the protégé and to improve its ability to successfully compete for Federal contracts.

Minority Business Enterprise (MBE): A minority business is defined as a company that is at least fifty-one percent owned, managed and controlled by one or more minority persons: African American, Asian American, Hispanic-American or Native American. The Minority Business Enterprise Program is designed to increase the opportunity for Wisconsin certified minority owned companies to sell their products or services to the State of Wisconsin and its agencies. The program specifically identifies state business opportunities, reviews and monitors all state contracts in purchasing, contractual services, and state construction for compliance with the MBE goals.

National Association of Minority Contractors (NAMC): The National Association of Minority Contractors is a nonprofit trade association that was established in 1969 to address the needs and concerns of minority contractors. While membership is open to people of all races and ethnic backgrounds, the organization focuses on construction industry concerns common to African Americans, Asian Americans, Hispanic Americans, and Native Americans. A voting member on the Goal Setting technical subcommittee.

NCHRP: National Cooperative Highway Research Program

OSHA: Occupational Safety and Health Administration

On-The-Job-Training (OJT) Goals: The Federal Highway Administration OJT policy requires state departments of transportation to establish apprenticeship and training programs targeted to move women, minorities, and disadvantaged persons into journey level positions to ensure that a competent workforce is available to meet highway construction hiring needs and to address the historical under-representation of members of these groups in highway construction skilled crafts. Projects with OJT requirements contain a special provision indicating the number and hours required to this end

Owner Controlled Insurance Program: OCIP is a coordinated insurance program that insures all enrolled Contractors and Subcontractors, and other Owner designated parties for work performed at the Project Site.

Plan 94.ORG: The I-94 North-South Freeway Project Website where you can learn about the 35-mile reconstruction of I-94, and use the tools to best navigate construction between 2009 and 2016.

Plan, Specifications, and Estimate (PS&E): A document that is submitted by the design and engineering team listing all specifications and estimates of quantities and cost for each phase of a construction project.

Pre Bid: An informational meeting where contractors interested in quoting on WisDOT projects come together to learn about project specifics, share concerns and details about the project with the DOT staff.. Primes and DBEs are given the opportunity to network.

Pre-Con: A Pre-Construction Conference arranged by the WisDOT Project Managers and Prime Contractors before contract execution to review construction operations, utility coordination, schedule of operations, chain of communication and OCIP requirements.

Prevailing Wage: Hourly basic rate of pay plus the employer's contribution for health and welfare, vacation, pension and other economic benefits which are required to be paid to workers engaged in the same class of labor in the same geographic area. Both Minnesota and the federal government have prevailing wage determinations. The proposal will contain all Prevailing Wage Determinations that apply to the project.
Prime Contractor: As distinguished from a general contractor the term Prime contractor is used in transportation construction contracting. WisDOT requires Prime contractors to perform a minimum of 30% of the

contract work with their own forces. The term general contractor tends to be used in non-highway construction industry.

Proposal Guaranty: The security furnished with a proposal to guarantee that the bidder will enter into the contract if the department awards the contract to the bidder. MnDOT requires all proposal guarantees to be in 5% of the bid price. Proposal guarantees can be in the form of a bid bond, cashier's check or certified check.

QBS: Quality Based Selection- the process used to select professional service firms to participate on WisDOT contracts.

QMP: The department's quality management program

Quotas: Quotas are expressly forbidden by law. Instead WisDOT sets DBE goals based on factors ready willing and able firms determine by the WisDOT DBESS staff members.

Record of Decision (ROD): A document separate from, but associated with, an environmental impact statement that publicly and officially discloses the responsible official's decision as to which alternative assessed in the EIS is to be implemented.

Request for Proposal (RFP): A formal invitation containing a scope of work which seeks a formal response (proposal) describing both methodology and compensation to form the basis of a contract. An RFP is prepared by the customer to solicit proposals from potential providers. An RFP lists project specifications and application procedures.

Records Retention and Disposition Policy (RDA): A records retention schedule and policy that allows the disposal of records after a certain period of time outlining how long records are to be retained maintained and their disposition after a retention period has ended. RDAs, by statute, expire after a period of 10 years from the date of their original approval.

Secretary: Chief Executive Officer of the Wisconsin Department of Transportation leading over 3,300 employees and dozens of satellite offices.

Small Business Initiative (SBI) WisDOT's program for providing opportunity for small business development through structuring contract requirements to increase competition.

Small Business Network (SBN): The Small Business Network facilitates the interaction between prime contractors and subcontractors via *Bid Express*. It allows them to exchange sub-quotes and communicate about projects.

Socially and Economically Disadvantaged individual: Any person who is a US citizen (or lawfully admitted permanent resident) and who is a Black American, Hispanic American, Native American, Asian-Pacific American, Asian-Indian American, or a woman, and any other minority or individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act. To be considered economically disadvantaged, an individual's net worth independent of home and business, must be below \$750,000.

Solicitation: A procurement method formatted as a request for proposals, request for bids or information by the United States federal, state or local government agencies.

Specification: Written directions, provisions and requirements contained in standard specifications or special provisions together with written method of performing the work, the quantities of work, and the quality of materials to be furnished under the contract.

Subcontractor: An individual or business that has a direct contract with a prime contractor to perform that portion of the work that is required by WisDOT.

TRANS - Transportation Alliance for New Solutions: WisDOT's labor development program using targeted outreach within the community to create a screens and prepares minorities, women and community residents her entry-level workers for careers in the construction and transportation industries. The focus is to have a pool of workers available for road construction contractors.

Trans-AC: Transportation Advisory Committee is a permanent standing committee formed to advise the WisDOT secretary on matters concerning DBEs including annual goals and program revisions.

Trans-CAC: Transportation Consultant Advisory Committee is a permanent standing committee for WisDOT consultants formed to advise the WisDOT secretary on matters concerning DBEs including annual goals and program revisions.

UCP (Unified Certification Program): The group comprised of the DBE programs of WisDOT, City of Madison, Dane County and Milwaukee County joined as partners to offer one stop shopping for applicants for all DBE certifications within the state.

UCP Directory: A directory of Firms certified by the UCP Certification members as a meeting the criteria of as a DBE Certified Firm. Stored as an Excel Spreadsheet, it is a searchable listing of all DBEs certified to perform work under the DBE program on WisDOT's website.
<http://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>
(Click the 'Access the UCP Directory' Link)

VendorNet: Wisconsin's online purchasing information system that provides: automatic Request for Bid (RFB) and Request for Proposal (RFP) notifications to registered vendors. Wisconsin Department of Administrations uses Vendor NET to solicit the purchases of goods and services. Generally, MBE certified firms

WDNR: Wisconsin Department of Natural Resources

WisDOT: Wisconsin Department of Transportation

Wisconsin Transportation Builders Association (WTBA): WTBA is trade association whose majority membership is involved in transportation building. WTBA is concerned with the development of a very competitive Wisconsin transportation system.

Commercially Useful Function (CUF)

DBE subcontracts – On-Site Monitoring for WisDOT projects with Federal Funding

“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” (49 CFR part 26)

“The DBE program regulation at 49 CFR § 26.37(b) requires that recipients monitor every contract on which DBE participation is claimed, including race-conscious DBE participation in response to a contract goal and race-neutral DBE participation towards a recipient’s overall goal” (USDOT GC approved guidelines, August 22, 2018)

Key Factors for determining CUF performance

- ✓ Management
 - Supervises daily work operations
 - Prepares and submits certified payrolls
 - Hires/fires personnel

- ✓ Workforce
 - Controls its own workforce through direct supervision by owner or superintendent

- ✓ Equipment
 - Owns the equipment necessary to perform the work under the contract
 - Leased equipment is allowable except from the prime
 - Must provide the appropriate personnel to run the equipment

- ✓ DBE Supplied Materials
 - A DBE contractor is to furnish and/or install materials
 - DBE contractor is responsible for:
 - Negotiating price
 - Determining quality and quantity
 - Ordering the materials
 - Paying for the materials

- ✓ Performance
 - Work is to be performed by DBE employees
 - Work is to be supervised by DBE owner or superintendent
 - Work is managed by DBE owner/superintendent without interference from prime
 - DBE must schedule work activities, material deliveries and other components of the work



DBE COMMERCIALLY USEFUL FUNCTION REVIEW AND CERTIFICATION

Wisconsin Department of Transportation
DT1011 2/2020

WisDOT Region/County	
Prime Contractor	
Project Number(s):	

CONTRACT DBE GOAL	
Advertised	Awarded (Post Evaluation)
Subcontract Value:	

PROJECT ENGINEER/CUF CERTIFIER	
Name	
Title	
Signature	

DBE SUBCONTRACTOR/CUF REVIEW RECIPIENT	
Firm Name	
Work Type for DBE Credit	
Date	

RECORDS AND DOCUMENTATION REVIEW	YES	NO	N/A
<p><u>Management/Supervision</u></p> <p>Yes, if a DBE on-site representative, a regular employee of the DBE, is providing the direct supervision of the DBE employees, and is in effective control of the DBE work. Name of DBE on-site representative: _____</p> <p>No, if a prime or another contractor representative is providing direct supervision of the DBE employees, and appears to be in control of the DBE work. <u>Examples of Records/Documentation for Verification:</u> Subcontract or Documents submitted to Project Engineer regarding the project on letterhead Document communication with DBE owner or Superintendent</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Employees</u></p> <p>Yes, if the DBE firm is performing their work with individuals normally employed by the DBE firm, and on this project these employees are under DBE supervision, and appear on DBE payrolls.</p> <p>No, if the DBE work is being performed by individuals who normally work for other firms, are being "shared" by the DBE firm for this project or are not appearing on the DBE payrolls. <u>Examples of Records/Documentation for Verification:</u> Certified Payrolls Name on equipment uniforms</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Supply/Install</u></p> <p>Yes, if the DBE negotiated the cost of materials, arranged for the delivery, and paid for the materials or supplies. Who and what work items? _____</p> <p>No, if the DBE was not involved in the acquisition of the materials used to perform their work items. <u>Examples of Records/Documentation for Verification:</u> Invoices or Bills of Lading/Delivery Tickets Cancelled checks or Documentation of Material On Hand</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Equipment</u></p> <p>Yes, if the DBE is using their own equipment, and Yes if the DBE is leasing specialized equipment, from other than the Prime, consistent with normal industry practices and at competitive rates. Name(s) on DBE equipment: _____</p> <p>No, if the DBE is dependent on using or leasing equipment from the Prime. <u>Examples of Records/Documentation for Verification:</u> Titles, Lease Agreements, Invoice Rental or lease documents</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Commercially Useful Function</u></p> <p>Does it appear that the DBE is actually performing, managing, and supervising the work that they are performing for DBE credit? If no – alert the DBE Office or the servicing LCS – Labor Compliance Specialist. <u>Example of Records/Documentation for Verification:</u> Subcontract Agreement, Purchase Order/Invoice, Hauling Ticket</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

DBE COMMERCIALY USEFUL FUNCTION REVIEW AND CERTIFICATION *(continued)*

Wisconsin Department of Transportation DT1011

Comment and Red Flag Checklist

FEDERAL STANDARDS FOR DBE UTILIZATION	RED FLAG CHECKLIST
<p><u>PERFORMANCE</u></p> <ol style="list-style-type: none"> 1. DBE must be responsible for performing its own work on the project 2. The scope of the DBE subcontract must be performed with its own workforce 3. The DBE keeps a regular workforce and has its own employees 4. The DBE is utilizing its own equipment 5. Equipment operation must be subject to the full control of the DBE <p><u>MATERIALS</u></p> <ol style="list-style-type: none"> 1. DBE is responsible for the delivery of the materials 2. DBE is ordering the material and invoices indicate that DBE is the customer 3. Material invoices indicate that DBE owner or Superintendent is the contact person <p><u>MANAGEMENT/SUPERVISION</u></p> <ol style="list-style-type: none"> 1. DBE supervisor is a full-time employee of the DBE 2. Employees are being supervised by DBE supervisor 3. DBE is scheduling work operations 	<p style="text-align: center;">Please check any that apply</p> <ul style="list-style-type: none"> <input type="checkbox"/> A portion of the DBE's work being done by the prime contractor or jointly with another contractor <input type="checkbox"/> Employees are working for both the Prime and the DBE <input type="checkbox"/> Equipment used by the DBE belongs to another contractor and there is no formal lease agreement <input type="checkbox"/> Equipment signs and markings cover another contractor's identity <input type="checkbox"/> Equipment has another contractor's name on it <hr style="border: 1px solid red;"/> <ul style="list-style-type: none"> <input type="checkbox"/> Materials for DBE credited work are delivered to the prime contractor <input type="checkbox"/> Materials are ordered, billed to, and/or paid by the prime contractor <input type="checkbox"/> Invoices do not indicate that DBE is the customer <input type="checkbox"/> Prime's employee is listed as the contact person on invoices <input type="checkbox"/> Materials come from prime contractor's stockpile <hr style="border: 1px solid red;"/> <ul style="list-style-type: none"> <input type="checkbox"/> DBE firm's employees are being supervised by prime contractor or another contractor <input type="checkbox"/> DBE is not supervising the work of its employees <input type="checkbox"/> DBE supervisor is not a full-time employee of the DBE
COMMENTS/NOTES	

DBE COMMERCIALY USEFUL FUNCTION REVIEW AND CERTIFICATION (*continued*)

Wisconsin Department of Transportation DT1011

Instructions for Completing DBE Commercially Useful Function Review & Certification Forms

Regulatory Guidance

Per 49 CFR 26.55 A DBE performs a commercially useful function (CUF) when the DBE is responsible for execution of their work under the contract and the DBE is carrying out its responsibilities by **actually performing, managing, and supervising their work**. A DBE firm **does not** perform a CUF if the DBE 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.

DBE Commitments become contractual requirements upon the execution of the contract and should be monitored and enforced accordingly. Modifications to the DBE commitment must be justified by the Department's project staff, in writing.

Per 49 CFR § 26.37 WisDOT must have a **monitoring and enforcement mechanism** to ensure that work committed to DBE firms on federally funded projects is actually performed by the DBE firm contracted with per the DBE Commitment Form (DT. This mechanism must include a **written certification** that the Project Engineer and/or WisDOT staff has adequately monitored the work site and contract records such that WisDOT staff confirms that the reviewed DBE firms have performed their work on the project with their own resources.

The Construction Project Engineer is responsible for reviewing the satisfactory work performance of all contractors, including DBE certified firms, on WisDOT contracts. However, anyone on the project team should alert the DBE Office if there are questions or issues regarding the performance of DBE subcontracted work.

On federal aid contracts, the signature of the Project Manager on the DT1582 Completion Certificate recorded in Project Tracking constitutes certification that the Project Engineer and/or project staff effectually monitored the DBE work performance and contract records to verify that the DBE firms were responsible for the execution of their work under the contract.

Instructions

1. DBE Office will provide forms DT1011 with corresponding Project ID and DBE firms to Project Engineer or CUF Certifier.
2. This CUF Review should be conducted when work approved for each selected DBE consultant is underway.
3. The reviewer/certifier must answer all of the questions on page 1 and affirm that there were no red flags. The Comment page should be used to explain anything checked "No" on page 1 and/or any other red flags.
4. The reviewer/certifier should check the "YES" box when the DBE consultant is clearly performing the CUF area (i.e. Management/Supervision, Employees, Materials, and Equipment) and when the area directly applies to a DBE consultant's work type. The reviewer/certifier should check the "NO" box when the DBE is not performing the CUF area and when the area directly applies to a DBE's subcontracted work type. The reviewer/certifier should check the "N/A" box when the category does not apply to the DBE and its subcontracted work type (i.e. The "Materials" category would not apply to DBEs subcontracted for materials testing work).
5. All findings on this form should be substantiated with entries in the Project Diary when applicable. A complete review affirms that an inspection of the DBE firm's work was conducted by WisDOT staff during the execution of the referenced contract. **Red Flag observations must be forwarded to the DBE office promptly: DBE_Alert@dot.wi.gov**

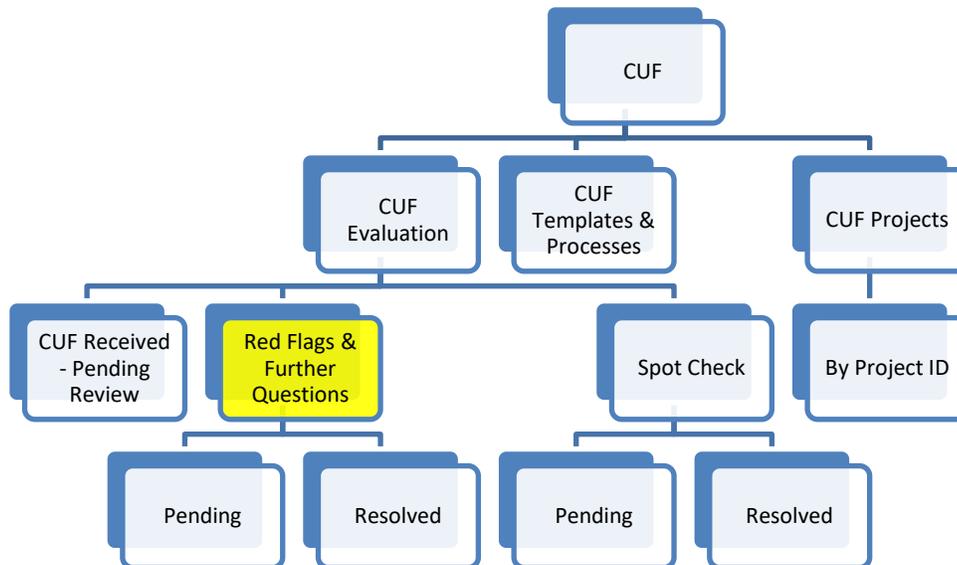
CUF Verification Process Handling CUF forms in Compliance, Red Flag Issues & Further Questions

All CUF Review forms (Form DT1011) to go into BOX/CUF/CUF Evaluation/CUF Received-Pending Review for a verification review.

Options include:

- In compliance – file to BOX/CUF/CUFProjects/ProjectID/Completed CUF forms
- Questions regarding compliance next steps:
 1. CUF Red Flag issues
 2. CUF further questions
 3. CUF Spot-Check needed –see separate Spot-Check Process
 4. CUF Escalation & Resolution Process when efforts towards resolution haven't concluded (see separate Escalation & Resolution Process)

CUF BOX (folders listed related to CUF verification process)



1. CUF Red Flag Issues

- Determine area of CUF red flag:
 - i. Performance, Materials and/or Management/Supervision
- Make initial entries in *CUF Issues Tracking Spreadsheet* in BOX/CUF/CUF Evaluation
- If there is an issue with a DBE who are professional services firms (material testers, surveyors, etc.) refer item to the DBE office contact to handle with a .cc to OBOEC DBE Program Chief
- Put CUF form in Box/CUF/CUFEval/Red Flags&FurtherQuestions/Pending
- Contact PL/PM requesting copy of necessary documentation. Note this in *CUF Issues Tracking Spreadsheet*

CUF Documents

EMAIL to PL/PM

Subject: xxxx-xx-xx: CUF Red Flag Issues Request

Hi X,

For Project # xxxx-xx-xx, (description), we are seeking information from you or your team before we follow up with the Prime regarding the red flag issues that you have identified on the attached CUF form (DT 1011) for (name of DBE firm).

Please send me a copy of whatever documentation that you reviewed to enter the (# of) highlighted items in the (*name of Red Flags section*) section of the Red Flag Checklist by (7 calendar days).

Sincerely,

CUF Compliance Reviewer signature

Attachment: Completed CUF form in question

Reviewer to set follow-up date for 9 calendar days

If there is no response – send a 2nd request email - as a forward to the 1st email

Subject: 2nd Request: xxxx-xx-xx: CUF Red Flag Issues Request

Hi xxx,

I just wanted to follow-up with you on where you are in completing the request for information regarding the red flag issues on the (DBE's name) CUF form for Project # xxxx-xx-xx, *description*, requested on *month date* as shown below.

If you have any questions regarding this request please contact me, otherwise please return the requested documentation by (*7 calendar days*)

Thank you,

CUF Reviewer Signature

File a copy of the sent email in Box/CUF/CUF Projects

Set follow-up for 1 week + 1 day

If documentation provided by PL/PM resolves red flag concern, the issue is now resolved. CUF Reviewer to:

- ❑ Enter a resolved date in the *CUF Issues Tracking Spreadsheet* with resolution information
- ❑ Send resolution email to all parties involved, and copy CUF Review form, related docs and correspondence as one PDF, Save doc as:
ProjectID_Contractor_Resolved_day.month.year
(eg. 1000-00-00_PayneDolan_Resolved_071020) to:
 - Box/CUF/Projects/Project ID
 - Box/CUF/CUFEval/Red Flags&FurtherQuestions/Resolved

If documentation provided from PL/PM supports red flag concerns, next step is to contact Prime, and sub if applicable.

CUF Documents

EMAIL to Prime

Subject: xxxx-xx-xx: CUF Red Flag Issues Information Request

Hi xxxx,

For Project # xxxx-xx-xx, (description), I am writing to you regarding the Red Flag issues that we have identified on the attached CUF form (DT 1011) for (*name of DBE firm*). These items do not conform to the Federal Standards for DBE Utilization shown on page 2 of the CUF form. Please send me a copy of any documentation that addresses the highlighted items in the (*name of Red Flags section*) section of the Red Flag Checklist by (*7 calendar days*).

Sincerely,

CUF Compliance Reviewer Signature

Attachment: CUF Review Form

Reviewer to set follow-up date for 9 calendar days

If there is no response – send a 2nd request email (.cc the DBE Program Engineer) - as a forward to the 1st email

Subject: 2nd Request: xxxx-xx-xx: CUF Red Flag Issues Request

Hi xxx,

I just wanted to follow-up with you on where you are in completing the request for information regarding the red flag issues on the (DBE's name) CUF form for Project # xxxx-xx-xx, *description*, requested on *month date* as shown below.

If you have any questions regarding this request please contact me, otherwise please return the requested documentation by (*7 calendar days*)

Thank you,

CUF Reviewer Signature

File a copy of the sent email in Box/CUF/CUF Projects

Set follow-up for 1 week + 1 day

If documentation provided by Prime/Sub (if applicable.) resolves red flag concern, the issue is now resolved. CUF Reviewer to:

- ❑ Enter a resolved date in the *CUF Issues Tracking Spreadsheet* with resolution information
- ❑ Send resolution email to all parties involved, and copy CUF Review form, related docs and correspondence as one PDF, Save doc as:
ProjectID_Contractor_Resolved_day.month.year
(eg. 1000-00-00_PayneDolan_Resolved_071020) to:
 - Box/CUF/Projects/Project ID
 - Box/CUF/CUFEval/Red Flags&FurtherQuestions/Resolved

If answer(s) to question and/or documentation provided from Prime supports red flag concerns, next step is escalation of the issue(s).

At the escalation stage we would involve the DBE Program Engineer. The DBE Program Engineer would determine if a certified letter should be sent. There are two different certified letters. A CUF Non-Response Certified letter and a CUF Out of Compliance Certified letter. See the Escalation & Resolution Process.

2. CUF Further Questions

- Determine area of CUF concern:
 - i. Performance, Materials and/or Management/Supervision
- Make initial entries in *CUF Issues Tracking Spreadsheet* in BOX/CUF/CUF Evaluation
- If there is an issue with a DBE who are professional services firms (material testers, surveyors, etc.) refer item to the DBE office contact to handle with a .cc to OBOEC DBE Program Chief
- Contact PL/PM requesting further information and/or documentation needed. Note this in *CUF Issues Tracking Spreadsheet*

EMAIL to PL/PM

Subject: xxxx-xx-xx: CUF follow-up questions

Hi X,

For Project # xxxx-xx-xx, (description), we writing to you about a question related to the attached CUF form (DT 1011) for (name of DBE firm) that you submitted on (date).

(Write question(s) to PL/PM)

If you have any questions regarding this request please contact me, otherwise please return the requested documentation by (7 calendar days).

Sincerely,

CUF Compliance Reviewer signature

Attachment: Completed CUF form in question

Reviewer to set follow-up date for 9 calendar days

If there is no response – send a 2nd request email - as a forward to the 1st email

Subject: 2nd Request: xxxx-xx-xx: CUF follow-up questions

Hi xxx,

I just wanted to follow-up with you on where you are in completing the request for information regarding the questions on the (DBE's name) CUF form for Project # xxxx-xx-xx, *description*, requested on *month date* as shown below.

If you have any questions regarding this request please contact me, otherwise please respond by (7 calendar days)

Thank you,

CUF Reviewer Signature

File a copy of the sent email in Box/CUF/CUF Projects

Set follow-up for 1 week + 1 day

If answer provided by PL/PM resolves CUF question, the issue is now resolved, and they can be thanked and informed the issue is resolved. If the answer provided by PL/PM has supporting documentation make sure to ask for it for the file as well. CUF Reviewer to:

- ❑ Enter a resolved date in the *CUF Issues Tracking Spreadsheet* with resolution information
- ❑ Copy CUF Review form, related docs and correspondence as one PDF, Save doc as: ProjectID_Contractor_Resolved_day.month.year (eg. 1000-00-00_PayneDolan_Resolved_071020) to:
 - Box/CUF/Projects/Project ID
 - Box/CUF/CUFEvaluation/Red Flags&FurtherQuestions/Resolved

CUF Documents

If answer to question and/or documentation provided from PL/PM supports red flag concerns, next step is to contact Prime, and sub if applicable. Follow-up Red Flag request process with contacting Prime. In section 1.

EMAIL to Prime

Subject: xxxx-xx-xx: CUF follow-up questions

Hi X,

For Project # xxxx-xx-xx, (description), we are writing to you about a question related to the attached CUF form (DT 1011) for (name of DBE firm).

(Write question to Prime)

If you have any questions regarding this request please contact me, otherwise please respond by (7 calendar days)

Sincerely,

CUF Compliance Reviewer signature

Attachment: Completed CUF form in question

Reviewer to set follow-up date for 9 calendar days

If there is no response – send a 2nd request email (.cc the DBE Program Engineer) as a forward to the 1st email

Subject: 2nd Request: xxxx-xx-xx: CUF follow-up questions

Hi xxx,

I just wanted to follow-up with you on where you are in completing the request for information regarding the questions on the (DBE's name) CUF form for Project # xxxx-xx-xx, *description*, requested on *month date* as shown below.

If you have any questions regarding this request please contact me, otherwise please respond by (7 calendar days)

Thank you,

CUF Reviewer Signature

File a copy of the sent email in Box/CUF/CUF Projects

Set follow-up for 1 week + 1 day

If answer provided by Prime resolves CUF question, the issue is now resolved, and they can be thanked and informed the issue is resolved. If the answer provided by Prime has supporting documentation make sure to ask for it for the file as well. CUF Reviewer to:

- ❑ Enter a resolved date in the *CUF Issues Tracking Spreadsheet* with resolution information
- ❑ Copy CUF Review form, related docs and correspondence as one PDF, Save doc as: ProjectID_Contractor_Resolved_day.month.year
(eg. 1000-00-00_PayneDolan_Resolved_071020) to:
 - Box/CUF/Projects/Project ID
 - Box/CUF/CFUEvaluation/Red Flags&FurtherQuestions/Resolved

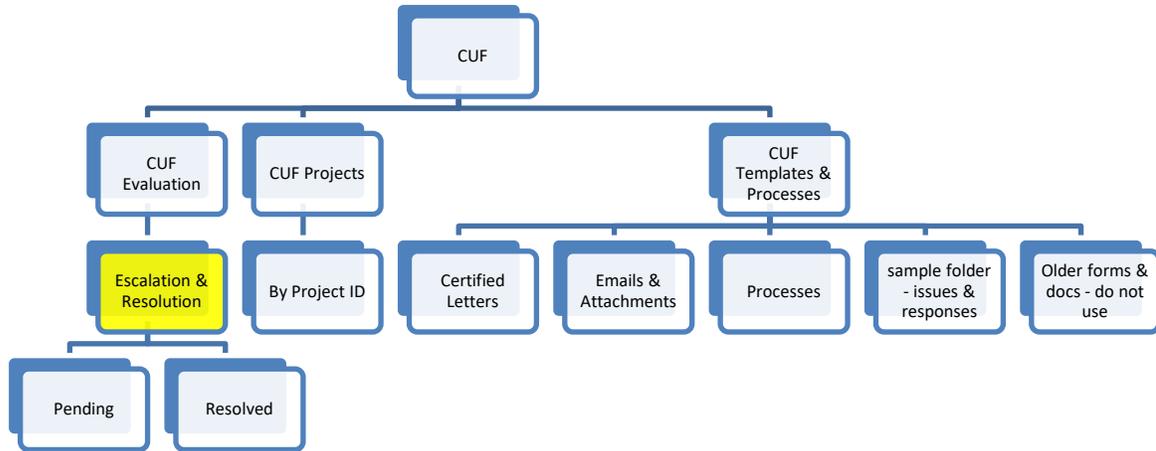
If answer(s) to question and/or documentation provided from Prime supports red flag concerns, next step is escalation of the issue(s).

At the escalation stage we would involve the DBE Program Engineer. The DBE Program Engineer would determine if a certified letter should be sent. There are two different certified letters. A CUF Non-Response Certified letter and a CUF Out of Compliance Certified letter. See the Escalation & Resolution Process.

CUF Escalation & Resolution Process Draft

This stage of the CUF process would be implemented if it has been determined that the contractor is not in compliance, is non-responsive, or both, after several emails requesting information/documentation to resolve CUF issues. (See CUF Verification Process)

This step would include any necessary information from the different sections of the FHWA Tip for Evaluating CUF shown below. This includes typical questions as well as documentation to evaluate. At the escalation stage we would involve the DBE Program Engineer. The DBE Program Engineer would determine if a certified letter should be sent. There are two different certified letters. A CUF Non-Response Certified letter (Example A) and a CUF Out of Compliance Certified letter (Example B). CUF BOX (folders listed related to CUF Escalation & Resolution Process)



Steps for the Escalation and Resolution Process:

1. CUF Reviewer has identified an issue (either non-responsive or non-compliant) after multiple attempts at resolution during the CUF verification process
2. CUF Reviewer communicates those issues to the DBE Program Engineer
3. If the issue is non-responsive, a CUF representative in the DBE office would send out a certified letter (Example A)
4. If the issue is non-compliance, the DBE Program Engineer would send out a certified letter (Example B)
5. A follow-up would be set for 3 days after the due date of the letter(s)
6. If documentation provided after the certified letter resolves the non-responsive or non-compliance issue, the issue is now resolved. CUF Reviewer to:
 - ❑ Enter a resolved date in the *CUF Issues Tracking Spreadsheet* with resolution information
 - ❑ Send resolution email to all parties involved, and copy CUF Review form, related docs and correspondence as one PDF, Save doc as: ProjectID_Contractor_Resolved_day.month.year (eg. 1000-00-00_PayneDolan_Resolved_071020) to:
 - Box/CUF/Projects/Project ID
 - Box/CUF/CUFEval/Escalation & Resolution/Resolved
7. If there is still no resolution, the DBE Program Engineer and the Project Leader for the project would meet to determine specifics around next steps (i.e. withholding of funds, decertification, etc.)
8. A 2nd letter would be sent with specific actions to enforce the CUF requirements of the contract
9. A follow-up would be set for 3 days after the due date of the letter(s)
10. If no resolution, the specific actions outlined in the 2nd certified letter would be implemented

CUF Documents

*** CERTIFIED LETTER – on letterhead ***

May 13, 2022

PRIME PAYROLL CONTACT
PRIME CONTRACTOR COMPANY NAME
ADDRESS
CITY, STATE, ZIP

Subject: Commercially Useful Function (CUF) Non-Compliance (Title 49 CFR 26.55)
PROJECT ID/PROJECT DESCRIPTION

Dear PRIME,

For the (PROJECT ID/PROJECT DESCRIPTION) project your firm is currently in violation of your contract because there are compliance issues regarding CUF monitoring that have not been resolved when requested to do so by project staff.

Multiple attempts have been made to contact you regarding the need to manage the work on this project in a way that supports the Federal Standards for DBE Utilization (LIST DATES OF COMMUNICATION). Please respond to the requirements found in our previous requests (see attached documentation) and submit this information to our office by (*7 calendar days*)

Per CFR 49 Part 26.55, The prime contractor is ultimately responsible for ensuring that a DBE performs a CUF and that each DBE has adhered to the federal standards. Failure of a DBE to perform a commercially useful function could result in WisDOT taking specific definitive actions to enforce the CUF requirement of the contract.

Some of the actions an STA could take include, but are not limited to, the following:

- Deny or limit credit towards the contract goal
- Require the prime to make GFE to replace the DBE to meet the goal on remaining work
- Withhold progress payments
- Terminate the contract
- Reduce the contractor's prequalification limit
- In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE

If you have any questions or concerns, please contact me at (LIST PHONE NUMBER AND EMAIL ADDRESS).

Sincerely,

Signature of CUF Representative
NAME OF CUF Representative
Title of CUF Representative

cc: x, Project Manager, WisDOT
x, Project Leader, (Company Name)
x, Supervisor, WisDOT
x, Labor Compliance Specialist, WisDOT
x, DBE, (Company Name)

Enclose

Wisconsin Department of Transportation (WisDOT) Organizational Structure

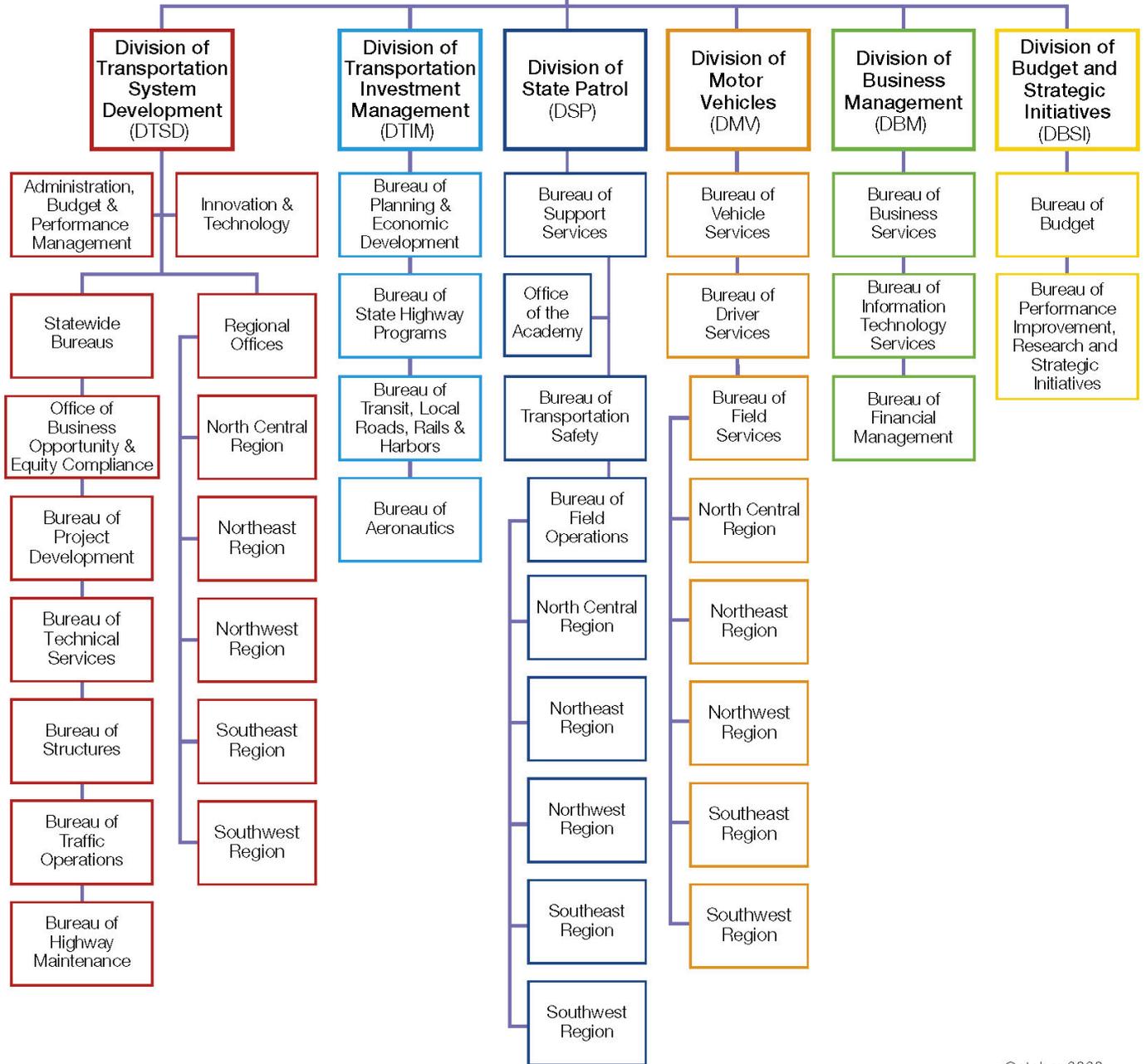


Executive Offices (EXEC)
 Secretary, Craig Thompson
 Deputy Secretary, Paul Hammer
 Assistant Deputy Secretary, Joel Nilsestuen

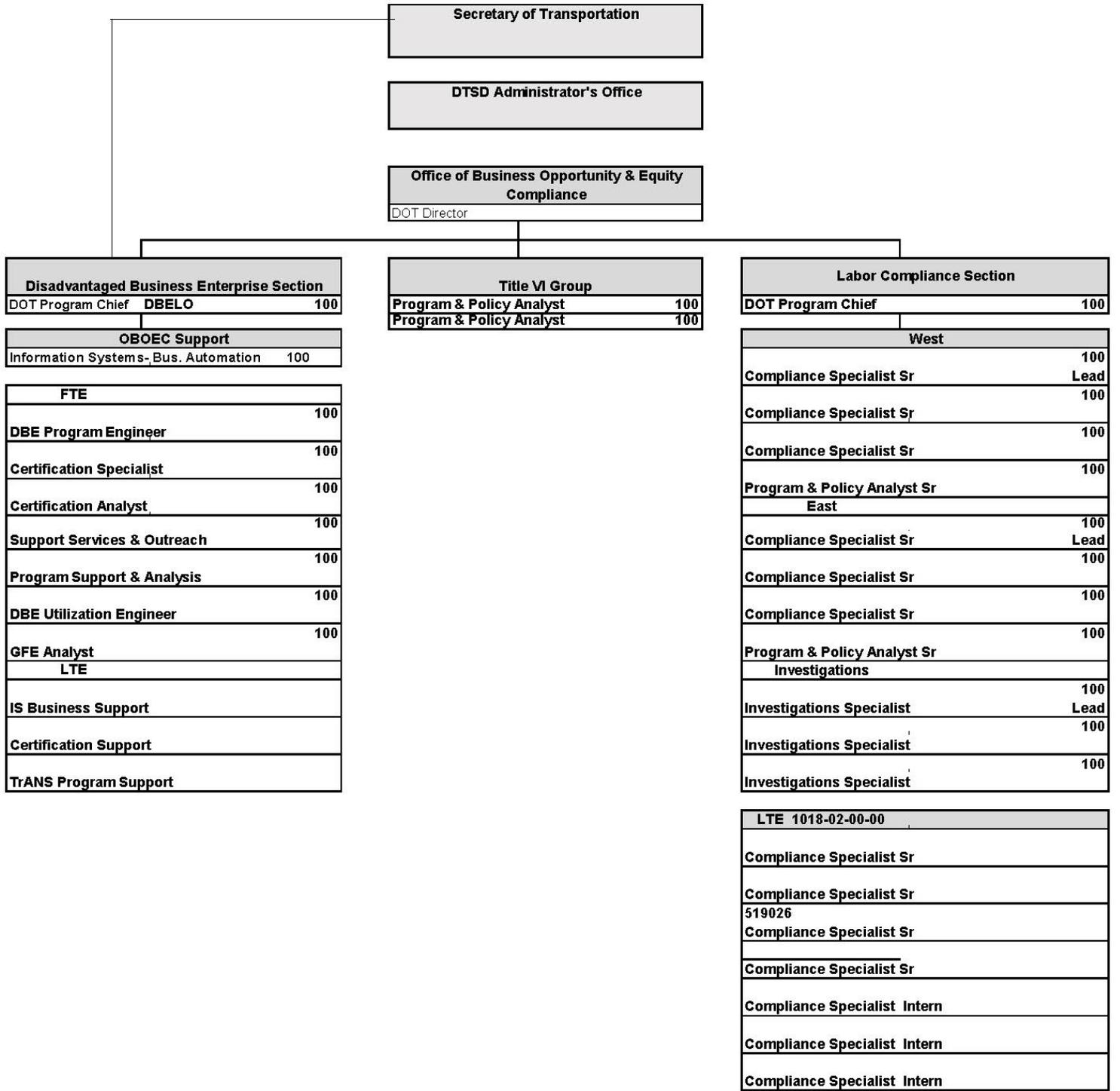
Office of Public Affairs (OPA)

Office of General Counsel (OGC)

Office of the Inspector General (OIG)



**OBOEC – Office of Business Opportunity & Equity Compliance
Organizational Chart**



Sample Uniform Report

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS											
1	Submitted to (check only one):	<input checked="" type="checkbox"/> FHWA	<input type="checkbox"/> FAA	<input type="checkbox"/> FTA--Recipient ID Number							
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):										
3	Federal fiscal year in which reporting period falls:	FY 2020	4. Date This Report Submitted: 11/24/2020								
5	Reporting Period:	<input type="checkbox"/> Report due June 1 (for period Oct. 1 - Mar. 31)	<input checked="" type="checkbox"/> Report due Dec 1 (for period April 1 - Sept. 30)					<input type="checkbox"/> FAA Annual Report due Dec. 1			
6	Name and address of Recipient:	Wisconsin Department of Transportation 6150 W. Fond du Lac Avenue Milwaukee WI 53218									
7	Annual DBE Goal(s):	Race Conscious Projection 7.11%			Race Neutral Projection 5.27%			OVERALL Goal 12.38%			
Awards/Commitments this Reporting Period											
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during the reporting period)	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs /Race Conscious (dollars)	F Total to DBEs /Race Conscious (number)	G Total to DBEs /Race Neutral (dollars)	H Total to DBEs /Race Neutral (number)	I Percentage of total dollars to DBEs	
8	Prime contracts awarded this period.	\$318,658,338	452	\$9,557,046	88			\$9,557,046	88	3.0%	
9	Subcontracts awarded/committed this period.	\$105,592,962	806	\$29,483,728	671	\$21,692,037	401	\$7,791,691	270	27.9%	
10	TOTAL			\$39,040,774	759	\$21,692,037	401	\$17,348,737	358	12.3%	
B	BREAKDOWN BY ETHNICITY & GENDER	Contracts Awarded to DBEs this Period									
		Total to DBE (dollar amount)			Total to DBE (number)						
		A Women	B Men	C Total	D Women	E Men	F Total				
11	Black American	\$0	\$5,119,154	\$5,119,154	0	67	67				
12	Hispanic American	\$860,911	\$987,372	\$1,848,283	17	28	45				
13	Native American	\$1,505,871	\$4,689,706	\$6,195,577	68	35	103				
14	Asian-Pacific American	\$1,379,800	\$780,368	\$2,160,168	13	33	46				
15	Subcontinent Asian American	\$0	\$1,848,012	\$1,848,012	0	9	9				
16	Non-Minority	\$21,869,580	\$0	\$21,869,580	489	0	489				
17	TOTAL	\$25,616,162	\$13,424,612	\$39,040,774	587	172	759				
Payments Made this Period											
C	PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	A Total Number of Contracts	B Total Dollars Paid	C Total Number of Contracts with DBEs	D Total Payments to DBE firms	E Total Number of DBE firms Paid	F Percent to DBEs				
18	Prime and sub contracts currently in progress	4,534	\$718,190,270	1,204	\$55,326,997	114	7.7%				
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A Number of Contracts Completed	B Total Dollar Value of Prime Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percent to DBEs					
19	Race Conscious	370	\$1,846,294,307	\$229,779,389	\$155,668,113	8.4%					
20	Race Neutral	97	\$9,758,913		\$23,863	0.2%					
21	Totals	467	\$1,856,053,220		\$155,691,976	8.4%					



Business Development Program Mission Statement

WisDOT is committed to implementing a Business Development Program tailored to improve the quality and scope of contracting relationships, build business capacity and increase utilization of DBE firms on contract opportunities solicited by the Wisconsin Department of Transportation. WisDOT offers one-on-one assistance and support to certified DBE firms using professional consultants to provide services essential to business development. The goal of these services is to provide access to the range of expertise and professional advice often needed, but often neglected by small businesses.

Business Development Support Services

TECHNICAL ASSISTANCE

- ◇ Review WisDOT contract specifications and related statutory language to facilitate informed bidding
- ◇ Analyze bid letting documents and tabulations to ascertain pricing variables
- ◇ Teach firms how to do job costing analysis (manual & computer)
- ◇ Training firms to perform bid history and bid matching analysis, line item comparison for planning
- ◇ Assess capacity and readiness for government contracting; including advice and referral

FINANCIAL SERVICES

- ◇ Teach and assist with automated payroll & accounting systems i.e. CRCS, Quickbooks
- ◇ Prepare financial package of information for bank review, financing, and loans
- ◇ Research and refer to micro & small business loan resources including WisDOT, FACC, SBA, USDOT
- ◇ Assist in the automation of accounting systems including the transition from paper to electronic
- ◇ Advise of credit repair strategies /options

MARKETING ASSISTANCE

- ◇ Draft Firm Capacity and Qualification Profiles
- ◇ Provide templates for business cards, brochures, websites
- ◇ Consult with DBE firms on appropriate marketing strategies for WisDOT contracting opportunities
- ◇ Evaluate firms'™ strengths and weaknesses i.e. accumulate Customer Service Ratings
- ◇ Provide corrective action strategies/plans for effective business marketing

LEGAL SERVICES

- ◇ Review legal language in leases, subcontracts, teaming agreements
- ◇ Draft and edit Human Resources policies to ensure government contract compliance
- ◇ Draft non-compete clauses for employees
- ◇ Help package certifications application materials
- ◇ Conduct legal assessment to maintain solvency working on WisDOT and other government contracts
- ◇ Advise on practices for dispute resolutions

Business Development Program

The DBE Business Development Program is designed to develop and implement a customized training program for DBE certified firms whose work aligns with WisDOT contracting and consulting opportunities.

Who Qualifies?

DBE Contractors and Professional Services Firms meeting the following criteria may qualify for the Program

- DBE Certified for 5 years or more
- Have not worked on WisDOT projects
- Have highway construction related NAICS codes
- Firms who are listed on Good Faith Waivers
- Firms who respond to Professional Service Solicitations (NOIs) and not selected
- Receive revenue from Non-WisDOT contracts
- Firms certified by WisDOT within the past 3 years via interstate certification with transportation related NAICS codes



Everyone Wins!

The goal of the DBE Business Development Program is to provide technical and professional support services to certified DBE construction and consultant businesses to increase their competitiveness and participation in WisDOT contracting opportunities.

For More Information Contact:

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**WisDOT DBESS
Business
Development
Program**

Your Guide to
Increasing Capacity and
Competitiveness



What's in it for you?

CUSTOMIZED TRAINING PLANS TO MEET YOUR BUSINESS GOALS!

Training plans may include the following professional services, advice or assistance

- Business Plan Review and editing
- Business Accounting skills and development
- Legal Assessments
- Legal Review of contract agreements
- Safety & Risk Management
- Understanding and interpreting Plans, Standard Specifications and Contract Proposals
- Construction Cost Estimating & Bidding Support
- Financial modeling
- Mentoring Services
- Pre and Post construction evaluation
- Dispute Resolution Strategies
- Project Management Techniques
- Much More!

Getting Started

Recruitment / Enrollment / Prerequisites

1. **RECRUITMENT:** Firms meeting Program criteria will be invited to participate and respond to a Capacity Building Business Questionnaire
2. **ENROLLMENT:** Select firms will be evaluated to determine if participation in the Program will demonstrate the potential for greater success
3. **PREREQUISITES:** Firms selected will be required to submit the following documents

- Business Plan
- Formal Business Assessment
- Bonding Capacity Assessment
- Contract Performance Evaluation

Firms meeting program criteria and selected to participate will enter into a Memorandum of Understanding (MOU) committing to the time, customized training schedule and components to be successful in the DBE Business Development Program.

The Process



WISCONSIN DEPARTMENT OF TRANSPORTATION

Mentor-Protégé Program for Construction

INTRODUCTION

The procedures contained in this document are guidance in developing, submitting, processing, and administering the Wisconsin Department of Transportation's Mentor-Protégé Program for Construction. The Mentor-Protégé program is a formal tool for business development that allows WisDOT to document business development relationships and tailor its DBE Support Services for DBE certified firms. The Mentor-Protégé Program is designed to facilitate mutually beneficial business relationships among firms interested, ready, willing, and able to compete in contracting opportunities in Wisconsin and federally. This program should not be interpreted to deter, discourage, or preclude firms from working together informally; in fact, it should supplement positive informal business relationships. These procedures cover new agreements, incentive eligibility, and reporting expectations. These procedures are consistent with the guidance stipulated in the Code of Regulations 49 CFR Part 26. The full text of the cited regulations is in the appendix of this document.

- 1) Subpart B: Administrative Requirement for DBE Programs for Federally Assisted Contracting
 - Part 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- 2) Subpart F: Compliance & Enforcement
 - Appendix C to Part 26: DBE Business Development Program Guidelines
 - Appendix D to Part 26: Mentor-Protégé Program Guidelines

PROGRAM PURPOSE

The Mentor-Protégé Program is a WisDOT initiative established to provide an opportunity for DBE firms to receive developmental assistance in business and/or technical areas from prime contractors performing on WisDOT projects. The goal of the mentoring experience is to act as a catalyst for the protégé to become a successful sub-contractor and/or build upon current success in sub-contracting. In some cases, the program may serve as a support structure for firms to prepare for prime contracting opportunities. It is anticipated that this experience will foster a relationship between mentor and protégé and provide increased opportunities that will contribute to the protégé's technical and business development and growth.

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the Wisconsin Department of Transportation.

PROGRAM GOALS

- 1) To provide an opportunity for DBE firms to receive developmental assistance in business, technical, or trade skills.
- 2) To provide a mechanism for Wisconsin DBE firms to become more successful sub-contractors to other government agencies as well as in the private sector.
- 3) To develop business relationships that foster opportunities for both large and small firms.
- 4) To provide training and assistance from other firms so they may:
 - Increase the capacity of DBE firms who work in areas traditionally used by WisDOT
 - Move into nontraditional and/or emerging skill sets within transportation
 - Compete in the marketplace outside of the DBE program

Mentor-Protégé Program

PROGRAM COMPONENTS

- 1) Recruitment
- 2) Pair meeting with DBE Office
- 3) Pair submits draft MOU
- 4) Mentor-Protégé Review Panel evaluates draft MOU; provides feedback as needed
- 5) Final MOU submission
- 6) Orientation for pairs
- 7) M-P Pair drafts training plan
- 8) Pair meets on schedule devised to meet objectives in training plan
- 9) M-P Pair reports on progress quarterly
- 10) WisDOT maintains regular contact with the pair and provides resources as requested

PROGRAM PARTICIPATION PREREQUISITES

Protégé Prerequisites

- ⇒ DBE Certification Annual Affidavit must be current
- ⇒ Submit a formal business plan or the SBA 1010C Form
- ⇒ Complete an Extensive Business Assessment
 - SBDC assessment or Capacity Assessment
 - Customer feedback survey
- ⇒ In business for at least 1 year prior to initiating the Mentor- Protégé pairing

Mentor Prerequisites

- ⇒ Must have a record of performance as a prime USDOT contractor
- OR
- ⇒ Must have a record of quality performance as a subcontractor
- ⇒ Business history void of Suspension or Debarment

PROGRAM DURATION

A Mentor-Protégé MOU will remain in effect for a minimum of 2 years (24 months) with the possibility of a 2-year extension. It becomes effective once signed by both parties and approved by WisDOT.

PROGRAM RESPONSIBILITIES

1. WisDOT's DBE Office is responsible for the overall administration and management of this Mentor-Protégé program. The DBE Office will coordinate with other units within WisDOT to ensure that the DBE Program Mentor-Protégé guidelines are followed and coordinated appropriately. The DBE Office will:
 - Recruit Mentor-Protégé pairs
 - Review draft Mentor-Protégé agreements
 - Communicate with Mentor and Protégé of acceptance/denial and comments on draft
 - Convene meetings of the Mentor-Protégé Review Panel
 - Approve DBE crediting on applicable projects
 - Confirm eligibility of mentors and protégés
 - Monitor the Mentor-Protégé pairs; receiving and reviewing reports
 - Host an Annual Mentor-Protégé Meet & Greet including WisDOT staff
4. The Mentor will:
 - Commit at least 16 hours per quarter to the protégé
 - Develop and implement an Action Plan for training and advisement
 - Conduct/Facilitate Meetings between appropriate mentor firm staff and protégé firm
 - Provide training in the most appropriate format: One-on-one, small group, shadowing
 - Evaluate the protégé's technical capabilities and strengths
 - Develop measures to demonstrate the effectiveness of the relationship
 - Outline how the mentor's assistance may increase protégé's contracting and subcontracting opportunities
5. The Protégé will
 - Maintain the eligibility requirements of the WisDOT Mentor-Protégé Program
 - Provide proactive and efficient communication, informing WisDOT and mentor of any changes in status that may affect the work, relationship, or MOU
 - Seek mutual opportunities with the mentor on contracting and subcontracting opportunities
 - Honor the nondisclosure of any privileged or proprietary information
6. The Mentor-Protégé pair are responsible for submitting the following documentation:
 - Semi-annual written progress reports
 - Proposed schedule of current and future activities
 - Activity Reports
 - If the Mentor-Protégé pair are *not on a contract together*, submit quarterly
 - if the Mentor-Protégé Pair are on a contract together, submit monthly
 - Final accomplishments report
 - Meeting Form submission

PROGRAM ELIGIBILITY

Both the mentor and protégé must meet the established eligibility requirements to participate in the program.

- ⇒ Both must be in good standing with the Wisconsin Department of Transportation. The Mentor-Protégé Program Coordinator will confirm each firm's standing by checking the List of Suspended and Debarred Firms.
- ⇒ Protégé firms must be certified DBEs before proposing participation in the Mentor-Protégé program
- ⇒ The Mentor must be listed on WisDOT's Bidders List
- ⇒ The Business Development Area selected by M-P partners consistent with the firm's primary line of business and/or beneficial to WisDOT's competitive environment
- ⇒ Only one mentor protégé Memorandum of Understanding is allowed
- ⇒ Under no circumstances is the mentor permitted to have an ownership interest of any kind in the protégé firm

PROGRAM STRUCTURE

Basis of Mentoring: Types of Assistance

- Technical & Trade skill growth
- Managerial
- Accounting & Estimating Professional Advice
- DBE firm NAICS code expansion
- Increase competitiveness inside and outside of WisDOT
- Increase market share on WisDOT project
- Improve knowledge and ability for successful quoting Other types of assistance that are approved by the Mentor-Protégé Review Panel

Recruitment: Firms may enter the Mentor-Protégé Program as acquainted or unacquainted mentor-protégé pairs in multiple ways:

(1) Acquainted Pairs: mentor and protégé decided to pair on their own initiative

⇒ The Mentor and protégé present a draft Mentor-Protégé agreement to the DBE office after having interviewed each other and agreed upon the basis of the mentoring relationship

(2) Unacquainted Pairs: WisDOT initiates and facilitates the pairing of the mentor and protégé

⇒ The mentor-protégé pair is recommended for a formal Mentor-Protégé MOU after completing the Mentoring Connections Networking Initiative.

⇒ The Mentor firm expresses interest in mentoring on the design master contract solicitation and is subsequently paired with a DBE firm that matches the expertise the mentor has offered to share. The DBE office will survey contractors who have been awarded prime contracts asking:

- are they willing to mentor?
- what type of firm would they mentor?
- What skills/expertise would they share as a mentor?

Mentor Protégé Memorandum of Understanding

A Draft Memorandum of Understanding is the proposed agreement developed by the Mentor and Protégé outlining the business case for their partnership, types of assistance and expertise to be shared, basis of the mentoring partnership, communication plan describing how plans to interface, training plan or curriculum outline. The draft will be reviewed and refined to meet the expectations of the final.

The Final Mentor-Protégé Memorandum of Understanding provides a framework for business development assistance or technical assistance that the Mentor has agreed to provide to the Protégé, as well as the conditions under which both parties will operate. It is a written development plan, approved by WisDOT which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement, and the services and resources to be provided by the mentor to the protégé. An Action Plan of activities, estimated milestones, and measures must be clearly delineated.

Mentor-Protégé Program

Orientation:

Mentor Communication Training- it is important to recognize differences in communication styles and managing constructive feedback in the context of the Mentor-Protégé MOU. The orientation will:

- Define mentoring.
- Define a mentor and a protégé as well as the roles and responsibilities of each.
- Discuss the benefits of becoming a mentor or protégé.
- Discuss what a successful mentoring program requires.
- Define the attributes of a mentor or protégé.

Giving & receiving Constructive Feedback & Accepting Criticism

- Explain the elements needed for constructive criticism.
- Describe the components that make up the structure of constructive feedback.
- Learn how to give and receive constructive feedback.
- Discuss the role of the mentor as a communicator and listener.
- Learn how to secure the benefits of constructive criticism.

Evaluation & Monitoring:

The annual review will evaluate, in addition to monitor, that the program requirements are still being followed. The deliverables and measures will be evaluated against the MOU's objective, curriculum, and training outlined in the Mentor-Protégé MOU. If WisDOT determines that the Mentor-Protégé Program requirements are not being followed, the MOU may be terminated.

- WisDOT's DBE Office will review the draft Memorandum of Understanding.
- The Mentor-Protégé Review Panel will evaluate the Action Plan and training outline or curriculum initially and annually.
- The DBE Office will review activity reports, training documentation, and annual accomplishment reports

PROCEDURE TO WITHDRAW FROM MENTOR PROTÉGÉ PROGRAM

If either the mentor or protégé proposes to end its participation in this MOU, they will furnish written notice of the proposed withdrawal from the MOU to the WisDOT Liaison, stating the specific reason(s), at least thirty (30) days in advance of the effective date.

PROHIBITIONS

The following are prohibited in a Mentor-Protégé relationship:

- 1) No Mentor-Protégé MOU can force the Protégé into an exclusive arrangement with the Mentor. As a general rule, the Protégé must retain the right to contract with others during the duration of said MOU and in the Action Plan.
- 2) Under no circumstances is the Mentor permitted to have an ownership interest of any kind in the Protégé's firm.
- 3) Although there may be various levels of assistance rendered by a Mentor to Protégé, no assistance can reach the level where day-to-day control has been relinquished by the Protégé to the Mentor.
- 4) The parties to a prospective Mentor-Protégé relationship must not proceed without a written Action Plan, which has been reviewed and approved in advance by WisDOT. Any activities conducted prior to the existence of a fully executed and approved Action Plan will not be credited toward established contract DBE goal nor will the costs be reimbursable by WisDOT.
- 5) The DBE may never be relegated to the status of middleman, broker, or front.
- 6) At no time, shall any arrangement lead to a situation where final decision-making authority is taken away from the Protégé.

PROVISIONS FOR MENTOR REIMBURSEMENT AND OR INCENTIVES

WisDOT will review the Mentor's reimbursement requests on an annual basis. Reimbursements are based on factors including staff level of expertise expected to be utilized, time anticipated, and actual time agreed to be charged. Any and all mentoring activities must be documented on the Activity Report for WisDOT review; each request for payment requires WisDOT approval before payment can be issued. To be eligible for reimbursement, the mentor's services and associated costs must be documented, and directly attributable and allowable to specific, activities between WisDOT and mentor then mentor and protégé. WisDOT cannot guarantee reimbursement, but will review all submissions by the mentor and submit approved requests through appropriate WisDOT channels.

APPENDICES

APPENDIX 1: [Template for Final Mentor-Protégé Memorandum of Understanding](#)

APPENDIX 2: [Sample Quarterly Meeting Form](#)

APPENDIX 3: [Sample Mentor-Protégé Activity Report](#)

APPENDIX 4: [Glossary](#)

APPENDIX 5: [DBE Program Regulations Providing Guidance for Mentor-Protégé](#)

APPENDIX 1

Template for Final Mentor-Protégé Memorandum of Understanding

*This document is intended to serve as a template only
Information should be tailored at the discretion of the mentor and protégé pair*

MENTOR-PROTÉGÉ MEMORANDUM OF UNDERSTANDING

Between

ABC (MENTOR)

And XYZ (Protégé)

This is a Mentor-Protégé Memorandum of Understanding (MOU) between ABC (MENTOR), a firm listed on the Wisconsin Department of Transportation (WisDOT) Bidders List with its principal place of business located at _____ and XYZ (PROTEGE), a Wisconsin certified Disadvantage Business Enterprise (DBE) firm with its principal place of business located at _____.

_____. This Memorandum of Understanding (MOU) between MENTOR and PROTEGE as set forth below this {date} of {month}, {year}.

1.0 INTRODUCTION AND PURPOSE

The Mentor-Protégé Program is a WisDOT initiative established to provide an opportunity for DBE firms to receive developmental assistance in business and/or technical and trade areas from prime contractors performing on WisDOT projects. The goal of the mentoring experience is to act as a catalyst for the protégé to become a successful sub-contractor and/or build upon current success in sub-contracting. In some cases, the program may serve as a support structure for firms to prepare for prime contracting opportunities. It is anticipated that this experience will foster a relationship between mentor and protégé and provide increased opportunities that will contribute to the protégé's technical and business development and growth.

This MOU is recognized by the WisDOT DBE Program, as prescribed by the U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization 49 CFR Part 26 Appendix D, as a way to help formalize a Mentor- Protégé relationship. This MOU provides a framework for business development assistance or technical assistance that the Mentor has agreed to provide to the Protégé, as well as the conditions under which both parties will operate.

2.0 OBJECTIVES OF THE MOU

PROTÉGÉ should check all the reasons below that are the basis of interest and the objectives of this MOU.

- ┌ Technical/Skilled trade assistance
- ┌ Managerial assistance
- ┌ Accounting and estimating support

Mentor-Protégé Program

- ┌ Professional advice
- ┌ DBE firm NAICS code expansion
- ┌ Increase competitiveness in markets outside of WisDOT
- ┌ Increase market share on WisDOT projects
- ┌ Improve the quality of sub contracting relationship
- ┌ Building relationships for a future joint venture or other business partnership
- ┌ Other: _____

3.0 CURRICULUM AND JOINT TRAINING

The MENTOR should check all the activities below that s/he can utilize MENTOR staff and resources to provide PROTÉGÉ education, conduct training, or attend WisDOT sponsored DBE training with PROTEGE.

- ┌ Review of a negotiated Scope of Services
- ┌ Scoping & Estimating principles and best practices
- ┌ Review of Standard Specifications and Construction & Materials Manual
- ┌ Review of Facilities Development Manual
- ┌ Discussion of legal liability in scoping and contract performance
- ┌ Effective Communication Practices working with WisDOT
- ┌ Identify areas that could be strengthened in the Protégé's general or financial management processes
- ┌ _____

4.0 WISDOT COMMITMENTS

WisDOT commits to provide training for the MENTOR-PROTÉGÉ pair and reimbursement for the MENTOR if applicable during the course of this MOU, outlined as follows:

4.1 REIMBURSEMENT FOR MENTOR

WisDOT will review the Mentor's reimbursement requests on an annual basis. Reimbursements are based on factors including staff level of expertise expected to be utilized, time anticipated, and actual time agreed to be charged. Any and all mentoring activities must be documented on the Activity Report for WisDOT review; each request for payment requires WisDOT approval before payment can be issued. To be eligible for reimbursement, the mentor's services and associated costs must be documented, and directly attributable and allowable to specific, activities between WisDOT and mentor then mentor and protégé. WisDOT cannot guarantee reimbursement, but will review all submissions by the mentor and submit approved requests through appropriate WisDOT channels.

5.0 MENTOR COMMITMENTS

The MENTOR commits to a minimum of 16 hours per quarter to be spent with the PROTEGE toward the objectives of this MOU. The time commitment may include:

- a. Work with PROTÉGÉ to create an Action Plan of activities and estimated milestones that will be carried out under this MOU.
- b. Discussions or meetings with PROTÉGÉ and additional professional contacts within the MENTOR's organization including financial, legal and human resources staff;
- c. Evaluation of the PROTÉGÉ's technical capabilities, assessment of its technical strengths, and identification of areas of potential subcontracting opportunities.
- d. Training for agreed upon items under Section 3.0 or accompanying PROTÉGÉ to WisDOT sponsored training listed under Section 4.1.
- e. In addition to the developmental assistance, MENTOR will provide factors to assess the PROTÉGÉ's developmental progress under the program. The criteria for evaluation of the PROTÉGÉ's developmental success might include:
 - A plan to measure the effectiveness of the relationship.
 - The quality of the protégé firm's technical capabilities.
 - How the MENTOR's assistance will potentially increase contracting and subcontracting opportunities for the protégé firm.
 - Other: _____

6.0 PROTÉGÉ COMMITMENTS

Under this MOU, the PROTEGE commits to the following:

- a. Work with MENTOR to create an Action Plan of activities and estimated milestones that will be carried out under this MOU.
- b. Maintain the eligibility requirements of the WisDOT Mentor/Protégé Program as detailed further in Section 6.1 and the NAICS codes in Section 6.2 below.
- c. Provide proactive and efficient communication, informing WisDOT and MENTOR of any changes in the PROTEGE's status that may affect the work, relationship, or this MOU, e.g., if the size status of the Protégé changes.
- d. Seek all opportunities including mutual opportunities with the MENTOR on contracting and subcontracting opportunities on WisDOT contracts that have no DBE goals and non-WisDOT contracts.
- e. Honor the nondisclosure of any privileged or proprietary information. Protégé shall not, without prior expressed permission of the Mentor, disclose to others, share with other firms, or otherwise make public knowledge or incorporate within Protégé projects.

6.1 PROGRAM REQUIREMENTS FOR PROTÉGÉ (DBE STATUS) The Protégé meets the eligibility requirements of the DBE program, as indicated by the checked Protégé's status below.

- DBE Certification Annual Affidavit is current
- PROTEGE is listed in WisDOT's UCP DBE Directory
- PROTEGE submitted formal business plan or SBA 1010C form
- PROTEGE submitted DBE Capacity Building Business Assessment (CBBA)
- (Optional) Education or training completed prior to MOU includes the following: _____

6.2 PROTÉGÉ NAICS CODES

NAICS Codes	Type of Service

7.0 DURATION OF MOU

This MOU will be effective when signed on behalf of both parties and approved by WisDOT and will remain in effect for a minimum of 2 years (24 months) with the possibility of a 2 year extension. The MOU will be reviewed for progress periodically.

8.0 PROGRESS REPORT AND SCHEDULE OF ACTIVITIES

MENTOR and PROTÉGÉ agree to submit semi-annual written progress reports with a proposed schedule of future activities and a final accomplishments report to WisDOT DBE Office to measure progress against the objectives of the Action Plan created as part of this Memorandum of Understanding. The reports will be due 30 days after the established reporting dates. The progress report will enable the PROTÉGÉ to convey whether it believes the objectives are being accomplished. The final report will include the successes as well as "lessons learned" of the Mentor/Protégé arrangement.

9.0 MONITORING MENTOR-PROTÉGÉ MOU

WisDOT will monitor the MOU by conducting an annual review. Key WisDOT officials will conduct the review, including the Office of Business Opportunity and Equity Compliance Director or representative, DBE Program Chief or a representative, and a construction management representative or a regional consultant unit supervisor. The annual review will evaluate, in addition to monitor, that program requirements are still being followed. The following items are examples of measures:

- a. Ability to successfully perform construction observation and construction contract management duties on highway projects (when PROTÉGÉ offers those services) Decreased reliance of the Protégé on the MENTOR for guidance and assistance with interpretation of WisDOT policy or procedures;
- b. Increased financial capacity; and
- c. Increased numbers of projects with contractors other than the MENTOR.

Mentor-Protégé Program

- d. If WisDOT determines that the Mentor/Protégé Program requirements are not being followed, the MOU may be ended.

10.0 POINTS OF CONTACT (Must include all information)

- a. MENTOR: (Mentor firm name; FEIN and DUNS Number; primary point of contact and position title; address; city/state/zip code; phone; fax; & e-mail address)
- b. PROTÉGÉ: (Protégé firm name; FEIN and DUNS number; primary point of contact; Address; city/state/zip code; phone; fax; & e-mail address.)
- c. WisDOT Liaison Name, phone, e-mail address

11.0 IMPLEMENTATION-TERMS AND CONDITIONS

General

The parties understand that the MOU is subject to the approval of WisDOT and is not intended to be legally binding or vehicle for transfer or commitment of funds or other resources, including a subcontract.

1. The MOU shall not constitute, create, or in any way be interpreted as a joint venture, partnership, or formal business organization of any kind.
2. Either party may change its' cognizant point of contact by written notice to the other, with copy to WisDOT DBE Program Chief.
3. All cooperation between the Mentor and the Protégé will be on a nonexclusive basis. Both parties are entitled to execute similar MOUs with other organizations without the notification or approval of either party.
4. Any resultant subcontract executed between the Mentor and the Protégé must be consistent with the requirements of the Mentor's contract with WisDOT and may be subject to WisDOT consent.

Intellectual Property and Proprietary Information

It is specifically understood that disposition of title to and/or rights in and to any intellectual property (including inventions and discoveries, patents, technical data, and copyrights) made or conceived by an employee or representative of the Mentor or Protégé, in the course of or under the MOU, remains with the initiating party or developer.

The Protégé shall not divulge to any third party any business or confidential information of the Mentor to which the Protégé may be given access by the Mentor in the course of an MOU for a period of the MOU.

Prohibitions

The following are prohibited in a Mentor/Protégé relationship:

Mentor-Protégé Program

- A. No Mentor/Protégé MOU can force the Protégé into an exclusive arrangement with the Mentor. As a general rule, the Protégé must retain the right to contract with others during the duration of said MOU and in the Action Plan.
- B. Under no circumstances is the Mentor permitted to have an ownership interest of any kind in Protégé.
- C. Although there may be various levels of assistance rendered by a Mentor to Protégé, no assistance can reach the level where day-to-day control has been relinquished by the Protégé to the Mentor.
- D. The parties to a prospective Mentor-Protégé relationship must not proceed without a written Action Plan, which has been reviewed and approved in advance by WisDOT. Any activities conducted prior to the existence of a fully executed and approved Action Plan will not be credited toward established contract DBE goal nor will the costs be reimbursable by WisDOT.
- E. The DBE may never be relegated to the status of middleman, broker or front.
- F. At no time, shall any arrangement lead to a situation where final decision-making authority is taken away from the Protégé.

12.0 PROCEDURE TO WITHDRAW FROM MOU

If either the MENTOR or PROTEGE proposes to end its participation in this MOU, they will furnish written notice of the proposed withdrawal from the MOU to the WisDOT Liaison, stating the specific reason(s), at least thirty (30) days in advance of the effective date.

13.0 EXPIRATION OF MOU

The MENTOR will notify the WisDOT of the date that MOU will expire. The mentor and protégé will complete and submit a final progress report to WisDOT

14.0 SIGNATURES FOR MOU

MENTOR and PROTÉGÉ are required to sign and date the MOU. Titles of the duly authorized individuals should also be included as shown below:

MENTOR:

(MENTOR Executive Officer's name, and title)

(Date)

PROTÉGÉ:

(Protégé President or Executive Officer's name and title)

(Date)

WisDOT Officials:

(DBE Engineer)

(Date)

(DBE Program Chief)

(Date)

Appendix 2

Sample Quarterly Meeting Form

**WISCONSIN DEPARTMENT OF TRANSPORTATION
MENTOR-PROTEGE QUARTERLY MEETING FORM**

PROTEGE Name: _____ Meeting Date: _____
MENTOR Name: _____ Date of Last Meeting: _____
Location of Meeting: _____ M-P Start Date: _____
WisDOT Liaison: _____
PROTEGE Term:
1st Qtr <input type="checkbox"/> ___ <input type="checkbox"/> 2nd Qtr ___ <input type="checkbox"/> 3rd Qtr ___ <input type="checkbox"/> 1st Year
1st Qtr <input type="checkbox"/> ___ <input type="checkbox"/> 2nd Qtr ___ <input type="checkbox"/> 3rd Qtr ___ <input type="checkbox"/> 2nd Year
1st Qtr <input type="checkbox"/> ___ <input type="checkbox"/> 2nd Qtr ___ <input type="checkbox"/> 3rd Qtr ___ <input type="checkbox"/> 3rd Year
General Comments Offered by Protégé:
Specific Concerns Offered by Protégé:
General Comments by MENTOR:
Notes by MENTOR/Protégé Committee Member:

APPENDIX 3

sample Mentor Protégé Activity Report

**WISCONSIN DEPARTMENT OF TRANSPORTATION
SAMPLE MENTOR-PROTEGE ACTIVITY REPORT**

<p>Protégé Name: _____</p> <p>MENTOR Name: _____</p> <p>M-P Start Date: _____</p> <p>WisDOT Liaison: _____</p>
--

Year 1

1 st Quarter	_____
1 st Quarter Meeting Date	_____
2 nd Quarter	_____
2 nd Qtr meeting Date	_____
3 rd Quarter	_____
3 rd Qtr meeting date	_____
4 th Quarter	_____
4 th Quarter Meeting Date	_____

Year 2

1 st Quarter	_____
1 st Quarter Meeting Date	_____
2 nd Quarter	_____
2 nd Qtr meeting Date	_____
3 rd Quarter	_____
3 rd Qtr meeting date	_____
4 th Quarter	_____
4 th Quarter Meeting Date	_____

Appendix 4

Glossary

FEIN	Federal Employer Identification Number. It performs the same role for a business that a social security number performs for an individual proving a way for the IRS (and other organizations) to keep track of you.
DUNS	Data Universal Numbering System. The DUNS number is a nine-digit number, issued by D&B, assigned to each business location in the D&B database, having a unique, separate, and distinct operation for the purpose of identifying them. The federal government requires organizations to provide a DUNS number as part of their grant applications and proposals.
Acquainted Mentor	Mentor-Protégé pair that initiates their relationship without the help of WisDOT. This pair offers a draft agreement for their Mentor-Protégé MOU as its first step.
Acquainted Protégé	Mentor-Protégé pair that initiates their relationship without the help of WisDOT. This pair offers a draft agreement for their mentor protégé MOU as its first step.
Unacquainted Mentor	A firm that expressed interest in mentoring through the DBE office survey that has not selected a DBE protégé.
Unacquainted Protégé	A DBE protégé firm that expressed their interest in participating in a mentor-protégé relationship to the DBE office that has no affiliation with a prime that could mentor

Appendix 5

DBE Program Regulations Providing Guidance for Mentor-Protégé

26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be

Mentor-Protégé Program

verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

WISCONSIN
UNIFIED
CERTIFICATION
IMPLEMENTATION
& OPERATING
AGREEMENT

July 25, 2020

UCP Operating Agreement

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APPENDIX [Documents included in separate zip file]

- **Exhibit A – The Wisconsin UCP Service Area Matrix**
- **Exhibit B – On-Site Review Form**
- **Exhibit C – Schedule of Owned/Leased Vehicles For DBE Credit**
- **Exhibit D – DBE Contractor’s Statement of Experience Form**
- **Exhibit E – Requested Work Area and Geographic Area Form**
- **Exhibit F – Approval of DBE Certification**
- **Exhibit G – Intent to Deny Certification**
- **Exhibit H – Denial of Certification**
- **Exhibit I – Withdrawal of Application**
- **Exhibit J – Withdrawal of DBE Certification**
- **Exhibit K – Intent to Reduce DBE-Certified Work Areas**
- **Exhibit L – Reduction of DBE-Certified Work Areas**
- **Exhibit M– Intent to Decertify**
- **Exhibit N – Intent to Decertify (Interstate)**
- **Exhibit O – Decertification (Removal) of DBE Status**
- **Exhibit P – Annual No-Change Affidavit Form**
- **Exhibit Q – Approval of Annual No-Change Affidavit**
- **Exhibit R – Request for Information**
- **Exhibit S – Change-to-Business Form**
- **Exhibit T – Expansion of DBE-Certified Work Areas Form**
- **Exhibit U – Acknowledgement of Receipt of DBE Application**
- **Exhibit V – Notice of DBE Ineligibility**
- **Exhibit W – Referral of DBE Application**
- **Exhibit X – Request for Information – Informal Hearing**

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- **Exhibit Y – Decertification (Removal) of DBE Status – Informal Hearing**
- **Exhibit Z – Agreement to Become Signatory to the WI UCP**
- **Exhibit AA – Approval of Expansion of DBE-Certified Work Areas**
- **Exhibit BB – Intent to Deny Expansion of DBE-Certified Work Areas**
- **Exhibit CC – Denial of Expansion of DBE-Certified Work Areas**
- **Exhibit DD – Withdrawal of Expansion of DBE-Certified Work Areas**

UCP Operating Agreement

1. PREAMBLE

This agreement describes the procedures set forth in the Implementation & Operating Agreement of the Wisconsin Unified Certification Program (UCP). [See Preamble in the “Wisconsin Unified Certification Program Agreement.”]

2. AUTHORITY AND PURPOSE

Each certifying agency and signatory to the Wisconsin Unified Certification Program Agreement agrees to adhere to certification standards and procedures as set forth in 49 CFR Part 23 and Part 26, Wisconsin Statute 84.072, and this Wisconsin Unified Certification Program Implementation & Operating Agreement.

The purpose of the Wisconsin Unified Certification Program Implementation & Operating Agreement is to support the development of processes and procedures for each certifying agency in order to comply with 49 CFR Part 23 and Part 26, subparts D and E. The four certifying agencies are: Wisconsin Department of Transportation, Milwaukee County, City of Madison, and Dane County. Each certifying agency will continue to administer a separate Disadvantaged Business Enterprise Program but shall use the same USDOT mandated forms, guidelines, and procedures in its certification process, as stated in the Wisconsin Unified Certification Program Agreement. On May 16, 2003, The Wisconsin UCP Committee developed the following four sub-committees:

- 1.) Certification Procedure Sub-committee
- 2.) Wisconsin UCP DBE Directory/Database Sub-committee
- 3.) IT Sub-committee
- 4.) Contract Compliance Sub-committee

3. DEFINITIONS

The terms used in this agreement have their meanings given in 49 CFR Part 26, and the Wisconsin Unified Certification Program Agreement, unless given a different meaning by this section.

- (a) “Agreement” means the Wisconsin Unified Certification Program Agreement.
- (b) “Application” means an application submitted for DBE certification under the Agreement and this Implementation & Operating Agreement.
- (c) “Certification” means certification of a firm as a Disadvantaged Business Enterprise under 49 CFR Part 23 and Part 26.
- (d) “Certifying agency” means a recipient that grants DBE certification under the Wisconsin UCP Agreement and the Wisconsin Implementation & Operating Agreement. The certifying agencies in Wisconsin are: the Wisconsin Department of Transportation, City of Madison, Dane County, and Milwaukee County.
- (e) “CFR” means the Code of Federal Regulations.

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- (f) “Committee” means the Wisconsin Uniform Certification Program Committee established under section 6 of the Agreement.
- (g) “CRCS” means the Civil Rights Compliance System (CRCS), a web-based application for Wisconsin UCP.
- (h) “DBE” means Disadvantaged Business Enterprise.
- (i) “Directors’ Committee” means the Disadvantaged Business Enterprise Program liaison officer from each certifying agency designated under 49 CFR Part 23 and Part 26, or his/her designee, responsible for implementing and administering the Wisconsin UCP.
- (j) “Wisconsin UCP DBE Directory/Database Sub-committee” means representatives from each of the certifying agencies responsible for establishing procedures for the implementation and maintenance of the electronic Wisconsin UCP DBE Directory/database of the Wisconsin UCP.
- (k) “FAA” means the Federal Aviation Administration.
- (l) “FHWA” means the Federal Highway Administration.
- (m) “FTA” means the Federal Transit Administration.
- (n) “Graduation” means a certifying agency has concluded that a DBE firm is no longer eligible for certification because it exceeds the small business size standards as defined in 13 CFR Part 121.
- (o) “Implementation & Operating Agreement” means this document.
- (p) “NAICS” means the North American Industry Classification System used to assign work areas.
- (q) “Recipient” means any entity, public or private, to which USDOT financial assistance is expended, whether directly or through another, through the programs of FAA, FHWA or FTA, or who has applied for such assistance.
- (r) “The Wisconsin UCP Service Area Matrix” means the diagram used to assign DBE certification applications for processing by service area and operating administration for each certifying agency. See exhibit A.
- (s) “UCP” means a Unified Certification Program approved by USDOT.
- (t) “UCP Committee Chair” is the lead agency of the UCP for the current calendar year.
- (u) “UCP Committee Chairperson” is the person from the lead agency presiding over UCP matters for the current calendar year.
- (v) “USDOT” means the United States Department of Transportation.
- (w) “WisDOT” means the Wisconsin Department of Transportation.
- (x) “WI UCP” means the Wisconsin Unified Certification Program.

4. CERTIFICATION SERVICE AREAS

The certification service areas are outlined in the Wisconsin UCP Service Area Matrix, on the following page.

Wisconsin UCP Certification Service Area Matrix

CERTIFYING AGENCIES

Certification Application Variables	Dane County	City of Madison	Milwaukee County	WisDOT
Location of Applicant Firm				
⇒Dane County	★	✓		
⇒Milwaukee County			★	✓
⇒SE Region's Six counties ¹			★	✓
⇒Statewide: excluding jurisdictions above				
⇒Interstate Certification applicant			★	★
⇒On-Site Review outside jurisdiction				✓
Applicant's Type of Work				
Vertical construction work		★	★	
HUD Contracting: residential housing & rehab		★		
County Services & Projects ²	✓		★	
Certification Type				
ACDBE certification	✓		★	
USDOT Modes				
FAA: Airport Concession	★			
FAA: Airport professional services and building construction			★	✓
FHWA: Interstate and highway planning & construction			★	★
FTA: Transit services- rail, street car, buses, specialized rural		★	★	✓

LEGEND

★ = Mandatory Service area or specialty identified by UCP partner in UCP Agreement and/or consistent with statute or regulations

✓ = Responsibility and resources available to service/support per UCP partner agency

1) SE Region's Six Counties: Milwaukee, Waukesha, Ozaukee, Racine, Kenosha, Washington

2) County services and projects= services supporting municipalities i.e. courthouse services, security guards, parks & zoo concessionaires, architectural services, real estate developers

NOTES

1) Each WI-UCP certifying agencies should process any DBE certification application they receive. Chart simply prioritizes and aligns certifying agency contract opportunities with applicant business opportunity and highlights each agency's priorities.

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- 2) Each agency is responsible for its applicant's on-site review. Reviews outside the certifying agency's named jurisdiction will be addressed and referred case-by-case; referrals and decisions to accept/decline referrals should be written (email).
- 3) Certifiers may utilize technology to effectuate an on-site review compliant with 49 CFR Part 26 standards.

5. INITIAL CONSOLIDATION OF CERTIFIED FIRMS

Each certifying agency was authorized to grandfather into the Wisconsin UCP, all firms certified by each certifying agency prior to June 18, 2002.

6. FEES AND COSTS

Firms seeking certification will not be assessed a fee for certification, effective April 15, 2003.

Each certifying agency shall procure at its own cost any forms prescribed under the agreement and this Implementation & Operating Agreement.

The UCP established under the agreement and its members must have sufficient resources and expertise to carry out the processes in this Implementation & Operating Agreement and the requirements of 49 CFR Part 26.

7. UNIFIED CERTIFICATION DECISIONS

Each certifying agency will continue to administer separate Disadvantaged Business Enterprise (DBE) programs. Standard form and letter templates are provided for the use of each agency, though it is understood that modifications consistent with 49 CFR Part 26 may be made by member agencies. In addition, guidelines and procedures used in the certification process may be individualized as long as adherent to 49 CFR Part 26. Each certifying agency will make all certification decisions on behalf of the Wisconsin UCP. Certification decisions by the Wisconsin UCP shall be binding on all USDOT recipients within the State of Wisconsin.

8. PROCESS FOR REFERRAL OF CERTIFICATION APPLICATIONS

When a certifying agency receives an application and determines that the application should be referred to another certifying agency for the review of the application, the following referral procedures should follow:

- 1.) The certifying agency shall forward the DBE application to an appropriate certifying agency within five (5) business days.
- 2.) The certifying agency shall notify the applicant, via letter, of the referral of the DBE application.

- 3.) The certifying agency shall notify the referral-receiving certifying agency of the referral prior to forwarding the DBE application.

9. GUIDELINES FOR NEW DBE CERTIFICATIONS

The Wisconsin UCP shall utilize the evaluation guidelines for new DBE certifications as outlined under 49 CFR Part 23 and Part 26 in volumes 64 and 68. The USDOT Uniform Certification Application and supporting documents identified under 49 CFR Part 23 and Part 26 and Appendix F are required for use by each certifying agency.

10. ANNUAL NO-CHANGE AFFIDAVITS

Each certifying agency shall require certified DBE firms to submit an Annual No-Change Affidavit as required in 49 CFR Part 26.

11. GUIDELINES FOR INTERSTATE CERTIFICATION APPLICATIONS

Consistent with 49 CFR Part 26, all firms located outside of Wisconsin must obtain certification from the UCP located in the state of their principal place of business, prior to submitting an application to the Wisconsin UCP. WisDOT and Milwaukee County are the agencies within the UCP that process interstate applications. Both agencies shall refer to the USDOT DOCR Ineligibility Database as part of interstate application review process, as required by 49 CFR Part 26.

12. GUIDELINES FOR INTERSTATE CERTIFICATION APPLICATIONS FROM AIRPORT CONCESSIONAIRES

All interstate certification applications will be processed according to the Wisconsin UCP Service Area Matrix (See section 4). Any certification application referrals will be determined on a case-by-case basis, within five (5) days of receipt. Consistent with 49 CFR Part 26, interstate firms must obtain certification from the UCP located in the state of their principal place of business, prior to submitting an application to the Wisconsin UCP.

13. GUIDELINES FOR EXPANSIONS OF CERTIFIED WORK AREAS

A certified firm may apply for an expansion of certification for additional work areas. The DBE firm should submit a cover letter to its certifying agency stating what work areas they are seeking for expansion. In addition to the cover letter, the firm must submit an expansion of work area additional information requested by the agency. Upon receipt of the firm's complete application for expansion, the certifying agency will render a decision to approve or deny the expansion. If the decision is to approve an Approval of Expansion of

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Certification letter is issued and the work area(s) will be included in the Wisconsin UCP DBE Directory. If the decision is to deny, the certifying agency will issue an Intent to Deny Expansion of Certification letter. If the certifying agency issues an Intent to Deny Expansion letter, the applicant may reply in writing and state its reasons for objecting to the proposed denial decision. The certifying agency will review the firm's response letter and may approve the request for expansion or may issue a Final Denial of Expansion letter. A final denial of expansion decision is appealable to USDOT.

14. GUIDELINES FOR REDUCTION OF CERTIFIED WORK AREAS

If a certifying agency concludes that a certified firm has exceeded the SBA size standards for one or more of their NAICS codes, the certifying agency shall issue an Intent to Reduce Work Area letter. The certified firm may reply in writing within twenty-one (21) days of the date of the Intent to Reduce Work Area letter, stating its reasons for objecting to the reduction decision. The certifying agency will evaluate the response from the certified firm and may rescind the Intent to Reduce Work Area or may issue an Informal Hearing Opportunity letter. The process for reduction of a firm's work areas are outlined in 49 CFR Part 26.

15. GUIDELINES FOR DBE FIRMS TO NOTIFY CERTIFYING AGENCY OF MATERIAL CHANGES TO FIRM

In accordance with 49 CFR Part 26, a DBE firm must within thirty (30) days, inform in writing, its certifying agency of any change in circumstances affecting the DBE's ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 23 and Part 26 or any material change in the information provided in the DBE's application form and supporting documentation. If a DBE fails to make timely notification of such a change, the DBE may be deemed to have failed to cooperate. Failure to cooperate may be cause for removal of DBE certification pursuant to Section 29 of this Agreement.

16. NOTICE OF DENIAL OF CERTIFICATION

The process for notices of denial of certification is set forth in 49 CFR Part 26.

17. GUIDELINES FOR WITHDRAWALS OF APPLICATIONS

A firm may withdraw its application for DBE certification after it has been submitted to a certifying agency for review. The request to withdraw must be submitted in writing to the certifying agency processing the DBE application. If an Intent to Deny Certification letter is has been issued by the certifying agency, a firm may respond by either withdrawing the application or responding in writing with its reasons for disputing the certifying agency's reasons for proposing denial. If a firm rebuts the denial reasons, the certifying agency will review the applicant's response letter and will render a final

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decision. The applicant firm may choose to withdraw their application up to the point that a final application decision letter is issued.

A firm may reapply immediately after withdrawing its DBE certification application. There is no waiting period for submitting a new application after an applicant firm has withdrawn an application.

18. GUIDELINES FOR WITHDRAWAL OF CERTIFICATION

A firm may withdraw from the Wisconsin UCP DBE Program by notifying its certifying agency in writing. The certifying agency will issue the firm a withdrawal of certification letter and remove the firm from the Wisconsin UCP DBE Directory

19. GUIDELINES FOR REAPPLYING AFTER WITHDRAWAL OF CERTIFICATION

If a certified firm withdraws from the WI UCP DBE program, they may at any time submit a new DBE application to any certifying agency of the UCP.

20. GUIDELINES FOR INFORMAL HEARINGS

If a certifying agency still has concerns after reviewing the DBE's written response to an Intent to Decertify letter, the certifying agency shall issue an Informal Hearing Opportunity letter.

Note: a firm may, in writing, request an informal hearing without specifically addressing the decertification reasons in the Intent to Decertify letter.

If the firm requests an informal hearing, the certifying agency will schedule the informal hearing.

The process for informal hearings is outlined in 49 CFR Part 26. Upon receiving a firm's request for an informal hearing, the UCP Committee Chair shall schedule an informal hearing on the matter, and shall provide written notice of the hearing to the appellant and to the certifying agency whose determination is appealed. The UCP Committee Chair shall also notify the other certifying agencies of the informal hearing and of the time and place for the informal hearing.

The Informal Hearing Panel shall consist of five (5) individuals to include:

- Two Unified Certification Program representatives (from differing agencies) that did not render the intent to decertify decision. A staff person from the UCP Chair agency will chair the hearing unless the hearing is brought by that agency; in that event, a member from one of the other UCP agencies will chair the hearing.

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- A subject matter expert in a field generally related to the appellant firm's type of work
- A legal representative from a UCP agency
- A UCP Chair appointee with a background that will provide helpful knowledge to the hearing

At the conclusion of the hearing, the informal hearing panel may decide that additional information from the appellant is required. In this situation the panel will issue a Request for Information letter to the firm. The firm will have thirty (30) days to respond to the Request for Information letter and submit the requested information. The panel will have thirty (30) days from the date of the informal hearing or the date of receipt of the requested information to render their hearing decision.

The decision of the informal hearing panel shall be rendered by a letter issued by the informal hearing chairperson.

All panel members must meet the requirements set forth in 49 CFR Part 26

21. CERTIFICATION APPEALS TO U.S. DEPARTMENT OF TRANSPORTATION

The process for certification appeals to the U.S. Department of Transportation is set forth in 49 CFR Part 26.

22. WAITING PERIOD FOLLOWING DENIAL OF CERTIFICATION AND DECERTIFICATION

No certifying agency may process an application submitted by a firm that has been denied certification or decertified by a different certifying agency, until six (6) months from the final decision date.

23. NAICS CODES ASSIGNMENT

Consistent with 49 CFR Part 26, the Wisconsin UCP adheres to the SBA Size Guidelines and assigns NAICS Codes to all certified DBE firms at the time of the approval of certification.

24. WISCONSIN UCP DBE DIRECTORY DATABASE

The process for developing and maintaining the Wisconsin UCP DBE Directory is outlined in Section 12 of the UCP Master Agreement, and 49 CFR 26.81 (g) and 26.31.

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The Wisconsin UCP DBE Directory is posted on the following website:
<http://wisconsindot.gov/Documents/doing-bus/civil-rights/dbe/dbe-ucp-directory.xlsx> .

The Wisconsin UCP DBE Directory shall be complete, functional, and easy to access for UCP members and contractors. All certified firms in the Wisconsin UCP DBE Directory are to be kept as current as possible. Because WisDOT is the custodian of the UCP database and Wisconsin UCP DBE Directory, all other certifying agencies must send updated data every thirty (30) days to WisDOT in order to keep the database and Wisconsin UCP DBE Directory current. WisDOT will update the database within seven (7) days of receiving updates. Each certifying agency must send its notification via email to WisDOT every thirty (30) days.

The UCP Committee has agreed that any changes to a firm's Wisconsin UCP DBE Directory listing should first be approved by the certifying agency and then forwarded to WisDOT as the custodian of the database.

25. INELIGIBILITY OF NEW DBE APPLICATIONS

The eligibility requirements for business size are set forth in 49 CFR Part 23 and Part 26. The eligibility requirements for personal net worth are set forth in 49 CFR Part 26.

The certifying agency shall issue a Notice of DBE Ineligibility to applying firms that exceed the business size standard and/or personal net worth cap.

26. GUIDELINES FOR INELIGIBILITY COMPLAINTS (THIRD PARTY CHALLENGES)

If an agency receives a certification ineligibility complaint regarding one of its certified DBE firms, the agency must follow the procedures set forth in 49 CFR Part 26.

Any person, may file a written complaint with any Wisconsin UCP certifying agency alleging that one of its DBE firms is ineligible for certification. A certifying agency may also submit such a complaint to another agency in the UCP. The certifying agency must follow the process set forth in 49 CFR Part 26.

27. GUIDELINES FOR REMOVAL OF DBE FIRMS THAT EXCEED THEIR SIZE STANDARD

The certifying agency shall issue a Notice of Intent to Decertify letter if a certified firm exceeds the size standard for its assigned NAICS code(s).

If the firm responds to the Notice of Intent to Decertify letter, the certifying agency must follow the requirements of 49 CFR Part 26

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If the certified firm fails to respond to the Notice of Intent letter by the deadline, the certifying agency shall issue a Final Decertification letter.

28. GUIDELINES FOR THE DECERTIFICATION PROCESS

If a certifying agency concludes that a firm is no longer eligible, the certifying agency shall issue a Notice of Intent to Decertify letter. The certified firm may reply in writing within twenty-one (21) days of the date of the Intent to Decertify letter and state its reasons for objecting to the decertification or the firm may request an informal hearing. The certifying agency will review the response from the certified firm and may accept the firm's explanation, allowing the firm to remain certified. The certifying agency may also find that its reasons for decertifications have not been rebutted by the firm. The DBE firm may then request an informal hearing. For details of the WI UCP informal hearing process, refer to section 20 of this Agreement.

Each certifying agency will notify WisDOT via email upon the decertification of a DBE.

29. CRITERIA FOR ADMITTING NEW CERTIFYING AGENCIES OR NON-CERTIFYING PARTICIPANTS TO WISCONSIN UCP

The UCP Committee at any time may admit a new certifying agency that commits to staffing a certification unit capable of meeting the guidance of this Agreement and complying with the requirements of 49 CFR Part 23 and Part 26. Upon admission, the agency, city, village, town or county shall execute this agreement and shall designate a committee member. The committee may also admit non-certifying participants to the Wisconsin UCP. The UCP Master Agreement outlines this process.

UCP Operating Agreement

Initial draft by: Lolita Davis-Spears, Milwaukee County
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Revised draft by: 2018 UCP Certification Subcommittee
2019 UCP Certification Subcommittee
2020 UCP Directors