

Disadvantaged Business Enterprise Program Manual



Mississippi Department of Transportation
Office of Civil Rights
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I. INTRODUCTION

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

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

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

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

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

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the Aeronautics Division; however if such funding does become available to MDOT appropriate goals will be established.

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

II. Definitions of Terms

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

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

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

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

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

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

MDOT has established a Certification Committee to certify eligible DBEs as required by 49 C.F.R. Part 26 to participate in federally assisted contracts. Certified, eligible DBEs will be included in a DBE directory. To meet the maximum feasible portion of its overall goal by race-neutral means, MDOT will make this policy statement available to all branches of

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State government and post it for public viewing. It will be distributed to DBE and non-DBE communities that perform work on USDOT-assisted contracts by newspaper legal notices, and other appropriate means. In meeting its race-neutral participation policy, it will make available at no costs to the general public copies of specimen proposals in order to make DBEs aware of contract opportunities and projects. In addition, open pre-bid meetings are scheduled prior to the acceptance of any bids in order to inform all contractors and subcontractors of the nature of projects and to provide the opportunity for those ready, willing and able to submit proposals as prime or subcontractors.

Date: _____

Melinda McGrath
Executive Director-Mississippi Department of Transportation

IV. Nondiscrimination. (§26.7)

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

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

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

Bidders List

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

- (1) firm name;
- (2) firm address;
- (3) firm's status as a DBE or non-DBE;
- (4) the age of the firm; and
- (5) the annual gross receipts of the firm.

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

Monitoring Payments to DBEs

MDOT will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the MDOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

VI. Federal Financial Assistance Agreement Assurance (§26.13)

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

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

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

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

VII. DBE Program Updates (§26.21)

MDOT will continue to carry out this program until all funds from the USDOT financial assistance has been expended and will provide to the USDOT updates representing significant changes in the program.

VIII. MDOT’s Policy Concerning This DBE Program (§26.23)

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

race, color, sex, or national origin.

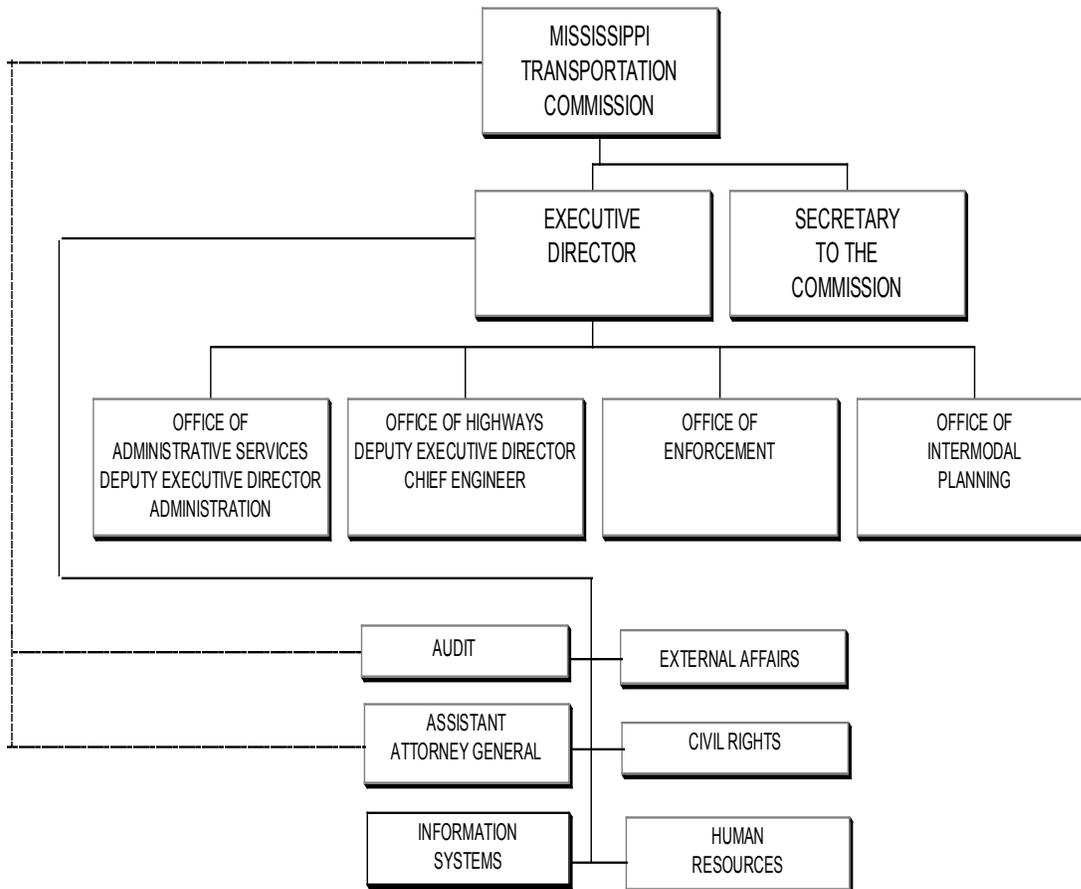
IX. DBE Liaison Officer (DBELO) (§26.25)

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

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

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

MDOT ORGANIZATIONAL CHART



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

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

11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains the updated MDOT directory on certified DBEs.
13. And such other duties as imposed by the Executive Director of MDOT.

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

X. DBE Financial Institutions (§26.27)

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

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

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

XI. Prompt Payment Requirements: (§26.29)

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

MDOT will require that the following clause be included in each USDOT-assisted prime contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 15 days from the receipt of each payment the prime contractor receives from MDOT. As of January 1, 2004,

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

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

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

XII. DBE Directory (§26.31)

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

MDOT will revise its Directories at least monthly, and will make updated information available to contractors and the public upon request. MDOT has adopted and does participate in a Unified Certification Program as described in 49 C.F.R. §26.81. A copy of Mississippi UCP can be found via our website at www.gomdot.com (See also Attachment I).

A Mississippi UCP Application form can be found in Attachment C or via our website at www.gomdot.com.

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

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

If MDOT determines that there is over concentration, corrective action will not be used until such are approved by the USDOT. If such approval is obtained, the measures will become part of MDOT's DBE Program. It is not the intention of MDOT to establish or use a mentor-protégé program at this time.

XIV. Monitoring and Enforcement Mechanisms (§26.37)

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

One of the main purposes of 49 C.F.R. Part 26 is to insure that DBEs are actually performing the work committed to them in the process of awarding the contract to the prime contractor. To achieve that objective, MDOT will measure payments actually made to DBEs rather than promises made at the stage when a federally assisted contract is awarded. Credit toward DBE goals will be given to contractors only when payments are made to MS UCP certified DBEs. MDOT will also keep a running tally on each federally assisted contract and the extent to which performance matches the commitment made by the prime contractor. Prime contractors whose performances fall short of original commitments will be subject to MDOT's compliance mechanism as outlined in MDOT's Notice to Bidders No. 5955 (Attachment F).

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

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

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

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

XV. Quotas (§26.43)

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

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

MDOT establishes its overall goal of DBE participation every three years by hiring a qualified consultant that follows the methodology as set forth in 49 C.F.R., Part 26.51 to determine the relative availability of disadvantaged business enterprises using MDOT's DBE Directory, census data, NAICS codes, bidder's list and other related facts. The methodology used in establishing the overall goal is contained in the report entitled, "Suggested Goal for MDOT Based on Relative Availability of Disadvantaged Business Enterprises." A copy of the report is attached hereto as Attachment B.

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

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

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

XVII. Means MDOT Will Use to Meet its Overall Goals (§26.51)

MDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. For the purposes of this program, race-neutral means include gender neutrality. Race and gender-neutral DBE participation includes any situation in which a DBE is awarded a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, and/or did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

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

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

MDOT will submit its overall goal for review and approval by the concerned operating administration and its projection of the portion of the goal that it expects to meet through race-neutral means by August 1 of every third year.

MDOT will establish contract goals to meet any portion of its overall goal it does not project being able to meet using race-neutral means.

The following provisions apply to the use of contract goals:

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

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

XVIII. Good Faith Efforts (§26.53)

Demonstration of Good Faith Efforts

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

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

Information to be Submitted

Construction Contracts

All apparent low responsive bidder(s)/offeror(s) will be required to submit the following information to MDOT within ten (10) days of the opening of the bid and prior to MDOT's committing to the award of the contract:

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

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

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

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

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

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

Consultant Contracts

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

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

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

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

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

Administrative Reconsideration

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

Good Faith Efforts when a DBE is replaced on a contract

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

In this situation, MDOT will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

XIX. Counting DBE Participation (§26.55)

MDOT will count DBE participation toward overall and contract goals as provided in 49 C.F.R. §26.55.

XX. Certification (§§26.61 – 26.91)

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

The MDOT certification committee allows all out of state firms seeking certification in Mississippi the option of a teleconference hearing in lieu of a face-to face meeting to determine if the firm is eligible to be certified under the DBE Program. In order to ensure that the Certification Committee speaks to the majority disadvantaged owner of the firm and that this person answer the questions of the committee without the assistance of any other person(s), MDOT further requires that the DBE firm seeking certification conduct the teleconference in the presence of any member of the home state's Unified Certification Program or the home state's DBE Supportive Services Representative. To comply new interstate certification rules effective January 1, 2012, MDOT will process out of state firms within 60 days of receipt of a complete application packet. If the out of state firm is denied, MDOT will provide a detailed letter outlining the exact reasons for denial along with supporting federal regulations and allow the firm the opportunity to provide rebuttal information, either in writing or in person. The applicant would still bear the burden of proof. If the firm is still found to be ineligible, the firm may appeal to USDOT. All other applicable certification rules still apply.

Only those firms certified prior to the MDOT Construction Letting or Request for Proposal can be used to meet a goal on projects let in that perspective month. MDOT elects not to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.

Process

Certification Steps

- MDOT Office of Civil Rights receives application with supporting documentation from prospective DBE firm.
- DBE Certification Officers reviews application for completeness and all supporting documentation.
- If application is not complete, DBE Firm is notified in writing to provide missing documents.
- If application is complete then Personal Net Worth (PNW) Statement and supporting documentation is forward to Audit Division for PNW analysis.
- Audit sends report back indicating if the business owner is below or above the PNW cap.
- If the owner is above PNW cap, owner receives written notification of his/her ineligibility to participate in the program.
- If the owner is below the PNW cap, the DBE Certification Officer performs an onsite review of in-state firms or requests a copy of an onsite review from the home state of out-of-state firms.
- Following the onsite review, the firm is scheduled for a DBE Certification Hearing.
- Firm receives written notification of the committee decision to certify or not to certify the firm within 15 days following the hearing.

Certification application forms and documentation requirements are found in Attachment “C” “D”, “E”, and “F” to this program.

For information about the certification process or to apply for certification, firms should contact the DBELO or visit the website at www.gomdot.com.

In the event MDOT proposes to remove a DBE’s certification, the procedures will be consistent with §26.87. These procedures are set forth in Attachment A.

Denial of Certification

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

Certification Appeals

Any firm or complainant may appeal the decision in a certification matter directly to USDOT. Such appeals may be sent to:

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

MDOT will promptly implement any USDOT certification appeal decisions, affecting the eligibility of DBEs for our USDOT-assisted contracting (e.g., certify a firm when the USDOT has determined that a denial of its application was erroneous).

Recertifications

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

“No Change” Affidavits and Notices of Change

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

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

“I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 C.F.R. Part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the Sponsor under §26.83(i). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$22,410,000.”

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

Personal Net Worth

All disadvantaged owners or applicants and currently certified DBEs, who are eligible under Part 26, as reviewed, are required to submit a statement of personal net worth.

The personal net worth form and the documentation that respondents must submit with it are included in Attachment E.

The application should be completed in its entirety to include information on the value of the primary residence and on the value of his or her investment in the firm. This information should not be used in the personal net worth determination.

XXI. Information Collection and Reporting

Reporting to USDOT

MDOT will report DBE participation to the Federal Highway Administration, the Federal Transit Authority, and where appropriate, to the Federal Aviation Administration semi-annually by submitting The Uniform Report of DBE Awards or Commitments and Payments for use by USDOT recipients.

Confidentiality

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

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

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

(ATTACHMENT J)

MDOT'S SMALL BUSINESS CONCERN
PROGRAM

Overview

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

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

Proposal

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

We analyzed historical data to aid in the determination of what size projects would be used for the program as shown in Exhibit A-B. We determined that Federal Fiscal Year (FFY)

2010 the average construction project awarded was \$4,715,141.00. Twenty-nine percent (29%) of the awarded projects were below one million dollars and forty-nine percent (49%) were below two million dollars. We also looked at the same data for FFY 2011. In FFY 2011 the average awarded project was \$5,875,941.00 with twenty- one percent (21%) of the projects below one million dollars and forty-three percent (43%) below two million dollars. We also looked at the annual gross receipt for the contractors that bid on projects in FFY 2010 and 2011(Exhibit C-D). Using the data it was determined that any construction project estimated to be one million dollars or below will be considered to be set-aside for the Small Business Concern program. It was also determined any Consultant/Design project below one hundred –thousand dollars (\$100,000) would be considered for the Small Business set-aside program. The reason for this amount is because Design/Consultant projects are normally around ten percent (10%) of the construction cost. There are additional weighted factors that will be considered before a project is set-aside for the SBC program. These factors include, but are not limited to, the location of the project and the availability of ready, willing, and able firms that perform the scope of work associated with the project. All federally assisted contracts valued at \$1 million and less will be analyzed by a committee comprised of members from the MDOT Office of Civil Rights, Construction Division, Consultant Services Division, and Contract Administration Division. Based on the above criteria, the committee will recommend projects for the Small Business Concern Program to MDOT’s Executive Director for final approval. MDOT has set a goal to have five set aside project the first full FFY after FHWA approval of the SBC program. See Exhibit E for implementation schedule.

In order for a firm to bid on a Small Business Concern set-aside project the firm must submit an application and the firm’s tax returns for the past three years. We have created a

Small Business Concern Program Application to be used by the firms seeking certification shown in Exhibit F. All certified DBE firms will automatically receive SBC status. The certified DBE firms are required to submit annually the firm's tax return therefore the Office of Civil Rights has already verified their gross receipts to insure the firm is in compliance with the small business standards as set by SBA.

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

The Office of Civil Rights has worked with the internal and external customers that are affected by this new component to the DBE program to ensure a smooth transition in the implementation of a Small Business Concern program (SBC). Outreach measures that will be used to increase small business participation in the program include, but are not limited to, the following: Presenting the opportunities available to small businesses through the SBC program, how the program works, and eligibility requirements to the members of the Mississippi Minority Contractors Association, Mississippi Road Builders Association, and the Mississippi American Counsel of Engineering Companies. MDOT will also disseminate SBC information and opportunities through our Supportive Services Consultant via monthly newsletters sent to contractors and posted online on our MDOT and DBE websites along with other contracting opportunities and through advertisements in the statewide newspaper. Upon FHWA approval of the SBC program, MDOT will have a media blitz announcing the program through our Public Affairs Division.

After the Final Rule was issued, staff from the Office of Civil Rights has made announcements at the monthly DBE pre-bid meetings about the requirement to add a small business element to the DBE program. At this meeting there is a discussion about the projects being let that month, each contractor tells who they are and what project they are bidding or submitting on, and construction related presentations are made. This meeting has allowed the firms that attend to not only network, but to be a part of the SBC Program development and will continue to be used as an outreach tool. MDOT also hosts additional networking and training events for certified DBE firms, potential DBE firms, and small business. The Office of Civil Rights has used these events as well to keep small business abreast of SBC program and implementation. MDOT will continue to work with internal customers, external customers, and the small business community to ensure the success of the SBC program.

EXHIBIT A

2010 Awarded Projects

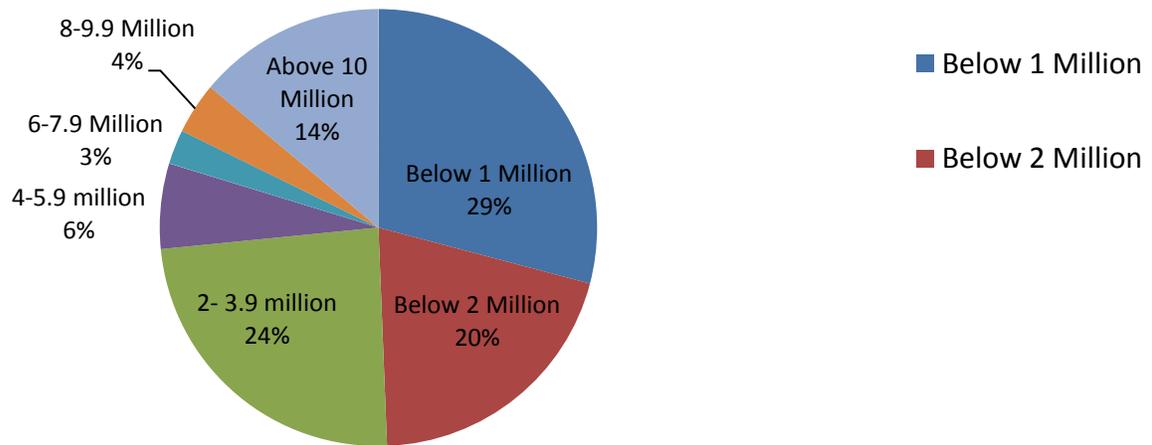
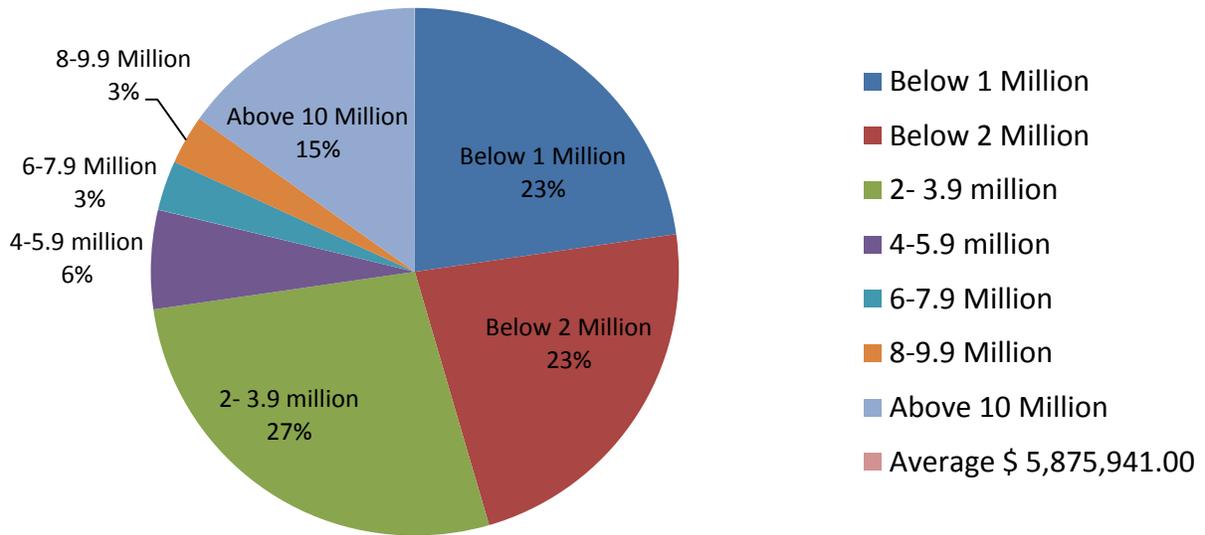


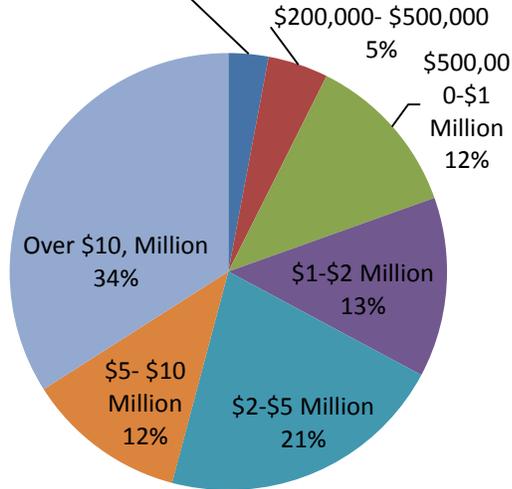
EXHIBIT B

2011 Awarded Projects



2010 Bidder's Registration Information Annual Gross Receipts

Less than
\$200,000
3%



- Less than \$200,000
- \$200,000- \$500,000
- \$500,000-\$1 Million
- \$1-\$2 Million
- \$2-\$5 Million
- \$5- \$10 Million
- Over \$10, Million

2011 Bidder's Registration Information Annual Gross Receipts

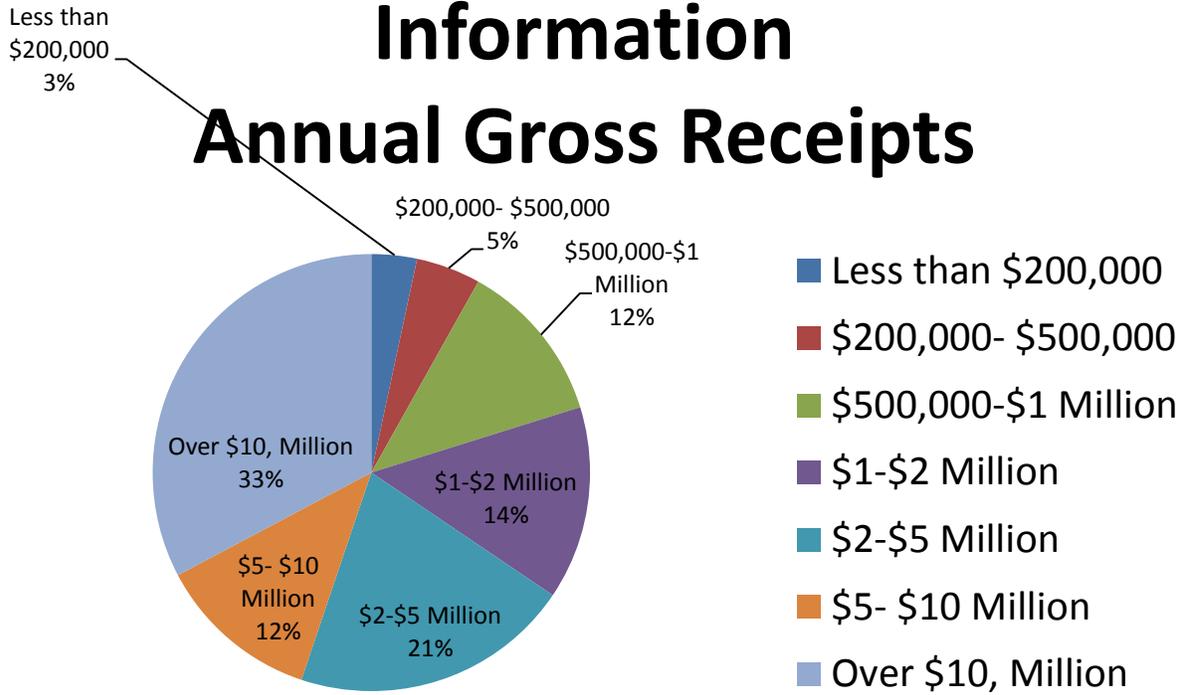


EXHIBIT E

Small Business Concern Implementation Schedule

- June 2012 -- Media Blitz by MDOT Public Affairs Division.
- August 2012 – Finalize and approve data base and any required Notice to Bidders and other related contract documents associated with SBC Program.
- September 2012 – Committee review and gain approval of contracting opportunities to be included in SBC Program for October.
- October 2012 -- SBC Program fully implemented.
- FFY - 2013 – Commit a minimum of five (5) projects to the SBC Program.
- Ongoing -- Continue current outreach measures as well as continue to look for additional effective ways to increase awareness and participation in the program.



SMALL BUSINESS CONCERN PROGRAM APPLICATION

A. Contact Information

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

B. Owner Information

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

C. Business Profile

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

(7) Number of employees: Full-time _____	Part-time _____	Total _____
(8) Specify the gross receipts of the firm for the last 3 years:		
Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	
Year _____	Total receipts \$ _____	

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

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

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

E. Prior/Other Certifications

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

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

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