

**Macatawa Area Express (MAX) Transportation Authority  
Holland, Michigan**

# **Disadvantaged Business Enterprise (DBE) Program**

Policy Statement; General & Administrative Requirements; Good Faith Efforts;  
DBE Certification Procedures; DBE Goal Calculation & Methodology

**Fiscal Years 2022-2024**

## **DBE POLICY STATEMENT**

### **Objectives / Policy Statement**

The Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) program is designed to combat discrimination and its continuing effects by providing contracting opportunities on Federally-funded highway, transit, and airport projects for small businesses owned and controlled by socially and economically disadvantaged individuals.

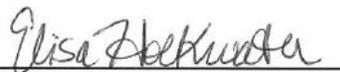
The Macatawa Area Express Transportation Authority (MAX) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Macatawa Area Express Transportation Authority has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Macatawa Area Express Transportation Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Macatawa Area Express Transportation Authority to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-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 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs and SBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The MAX Executive Director has been delegated as the DBE Liaison Officer. In that capacity, the Executive Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Macatawa Area Express Transportation Authority in its financial assistance agreements with the Department of Transportation.

The Macatawa Area Express Transportation Authority has disseminated this policy statement to the Board and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts and will make this policy part of all bid specifications for future bids.



Elisa Hoekwater, MAX Executive Director

May 18, 2021

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Program Objectives**

The objectives of this program are as follows:

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.

### **Section 26.3 Applicability**

The Macatawa Area Express Transportation Authority is the recipient of federal transit funds authorized by Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **Section 26.5 Definitions**

The Macatawa Area Express Transportation Authority will adopt the definitions contained in 49 CFR 26 for this program. [Federal Register, Vol. 79, No. 191, Final Rule: October 2, 2014]

### **Section 26.7 Non-discrimination Requirements**

The Macatawa Area Express Transportation Authority 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 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Macatawa Area Express Transportation Authority will not, directly or through contractual 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.

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to DOT: 26.11(b)**

The Macatawa Area Express Transportation Authority will report DBE participation to DOT as directed by its DOT operating administrations.

MAX will report DBE participation to FTA by preparing the Uniform Report on DBE Awards, Commitments, and Payments, and submitting this report in TrAMS ([www.transit.dot.gov/ntd](http://www.transit.dot.gov/ntd)) twice per fiscal year, for the respective periods of October 1 – March 31 (due June 1), and April 1 – September 30 (due December 1). These reports will reflect payments actually made to DBEs on DOT-assisted contracts—both completed

and ongoing. Additionally, all dollar amounts will reflect only the Federal share of such contracts, and will be rounded to the nearest dollar.

A sample of the DBE Uniform Report form—updated by FTA in 2015—is provided in Attachment 9. The instructions for compiling, preparing, and filing the Uniform Report on DBE Awards, Commitments, and Payments are contained in Attachment 10.

Bidders List: 26.11(c)

The Macatawa Area Express Transportation Authority maintains a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidders list will include the name, address, contact information, DBE/non-DBE status, year of founding, number of employees, and annual gross receipts of firms (expressed as a numerical range).

We will collect this information by including a contract clause requiring prime bidders to report the name, address, contact information, DBE or non-DBE status, year of founding, number of employees, and annual gross receipt of the firm (expressed as a numerical range).

Records: 26.11(d)

The Macatawa Area Express Transportation Authority maintains compliance-related records and DBE documentation for at least three (3) years.

### **Section 26.13 Federal Financial Assistance Agreement**

The Macatawa Area Express Transportation Authority has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The Macatawa Area Express Transportation Authority 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 recipient's 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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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, which may include, but is not limited to:

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

Since the Macatawa Area Express Transportation Authority is the primary recipient, receiving planning, capital and/or operating assistance and awarding prime contracts (excluding transit vehicle purchases) the cumulative value of which exceeds \$250,000 in FTA funds in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

Elisa Hoekwater  
MAX Executive Director  
171 Lincoln Ave., Suite 20  
Holland MI 49423  
(616) 928-2488  
[e.hoekwater@catchamax.org](mailto:e.hoekwater@catchamax.org)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Macatawa Area Express Transportation Authority complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the MAX Authority Board concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 of this program. The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials.

The DBELO has a staff of one (1) to assist in the administration of the DBE program: Charles Veldhoff, Data Analyst/EEO Officer, [c.veldhoff@catchamax.org](mailto:c.veldhoff@catchamax.org) with the duties and responsibilities included below:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific attainment); identifies ways to improve progress.
6. Analyzes MAX's progress toward attainment and identifies ways to improve progress.
7. Advises the CEO\governing body on DBE matters and achievement.
8. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides certification information according to the criteria set by DOT, and acts as liaison to the Uniform Certification Process in Michigan.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Utilizes the MUCP directory.

13. Conducts, documents, and maintains all DBE compliance reporting documentation, including:
  - a. Firm background information
  - b. Project/work description(s)
  - c. Confirmation of dollar amount(s)
  - d. Work schedule(s)
  - e. Site visit review(s)
  - f. Invoice payment record(s)
  - g. Good faith efforts (if applicable)
  - h. Commercially useful function (CUF) reviews
  - i. Final summary certifications

### **Section 26.27 DBE Financial Institutions**

It is the policy of the Macatawa Area Express Transportation Authority 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 DOT-assisted contract to make use of these institutions. We have made the following efforts to identify and use such institutions:

To date, MAX has not identified any DBE financial institutions. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **Section 26.29 Prompt Payment Mechanisms**

MAX will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from MAX. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors' work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MAX. This clause applies to both DBE and non-DBE subcontracts.

Additionally, the prime contractor is required to maintain records and documents of payment to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for MAX's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by MAX or DOT. This clause applies to both DBE and non-DBE subcontracts.

Failure of the contractor to comply with this requirement is cause for breach of contract, resulting in the subcontractor being paid directly and the amount deducted from the retainage owed to the prime contractor.

### **Section 26.31 Directory**

The Macatawa Area Express does not maintain a directory identifying all firms eligible to participate as DBEs, but instead makes use of the MUCP DBE Directory, the latest version can be downloaded from the website <https://mdotcf.state.mi.us/public/docs/mucp/files/DBEUCPDirectory.pdf> The MUCP directory

can also be viewed at the MAX administrative offices. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is revised annually.

### **Section 26.33 Overconcentration**

MAX has not identified that overconcentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

MAX has not established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The Macatawa Area Express Transportation Authority will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. MAX will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. MAX will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. MAX requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for MAX's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of MAX's of DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
4. In accordance with 49 CFR 26.37(b), MAX will monitor every contract (including professional services) 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.

MAX has implemented a monitoring and enforcement mechanism that includes written certification that we have reviewed contracting records and monitored work sites while the DBE is active on the jobsite. This will be accomplished through contractual obligations on each project. MAX has implemented a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to FTA, we will show both commitments and attainments, as required by the uniform reporting form.

For each DBE participation claimed, the DBELO delegate—the Data Analyst/EEO Officer—will maintain records consisting of the following documentation:

- a. Firm background information
- b. Project/work description(s)
- c. Confirmation of dollar amount(s)
- d. Work schedule(s)
- e. Site visit review(s)
- f. Invoice payment record(s)

- g. Good faith efforts (if applicable)
  - h. Commercially useful function (CUF) review
  - i. Final summary certification
5. Under DBE program regulation at 49 CFR 26.55(c), MAX will only count expenditures to a DBE contractor toward DBE goals if the DBE is performing a *commercially useful function*—or CUF—on that contract. Consequently, for every contract on which DBE participation is claimed, MAX will determine if all DBEs are performing a CUF to accurately credit DBE services. To meet the monitoring requirement, MAX will utilize MDOT’s documentation form entitled Commercially Useful Function (CUF) Review (Form 4109T, 12/17), shown in Attachment 11.
  6. MAX will proactively review contract payments to subcontractors, including DBEs, no less than quarterly, and will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by visits to the project site to verify DBE work/equipment, a review/filing of associated contract records, DBE payment verification, and a final dated and signed documented confirmation certifying DBE work.  
  
Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to MAX by the prime contractor.
  7. MAX will notify the Regional Civil Rights Officer (RCRO)—in writing, within 30-days—of all rolling stock/bus purchases.

#### Prompt Payment Complaints

A subcontractor should first work to resolve any prompt payment concerns directly with the prime contractor; however, should a subcontractor be unable to resolve a payment discrepancy with the prime contractor—or is not comfortable initiating such a process with the prime contractor—the affected subcontractor should contact MAX’s DBELO as designated in this program.

Should filing a prompt payment complaint with the DBELO not result in a timely and meaningful action by MAX to resolve prompt payment disputes, the affected subcontractor may contact FTA.

#### Prompt Payment Dispute Resolution

MAX will work to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29 through the use of meetings between the prime and subcontractor, along with the resident project representative and/or project manager presence, as appropriate.

Any meeting for the purposes of dispute resolution will include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

#### Enforcement Actions for Noncompliance of Participants

MAX will provide appropriate means to enforce the requirements of §26.29. Failure of the prime contractor to comply with this requirement is cause for breach of contract and will result in the subcontractor being paid directly and the amount deducted from the retainage owed to the prime contractor.

### **Section 26.39 Fostering Small Business Participation**

MAX is committed to providing equal, open access for small businesses and in ensuring that all small business designations receive adequate opportunities to participate in contracting and procurement activities. Strategies have been adopted to ensure a reasonable number of prime contracts are made available to small businesses—including DBEs—and has included an element to structure contracting requirements to help facilitate race-neutral competition by small businesses; Small Business Program/Enterprise (SBP/E) participation cannot be counted toward DBE credit, and will facilitate its small business participation without a social-disadvantaged element.

**Small Business Element:** In addition to including MDOT’s certified Small Business Program (SBP) businesses in MAX’s Master Bidders Listing, one or more of the following strategies may be used in, but not limited to, fostering small business and DBE participation efforts:

1. Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
2. In multi-year design-build contracts or other large contracts, (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
3. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
4. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
5. To meet the portion of our overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
6. At initial contract formation or during re-evaluation of an open-bid contract renewal, due consideration will be given with an emphasis of breaking down a single contract into smaller, separate contracts to enable DBEs and small businesses the opportunity to bid and more reasonably perform.

The MAX Management Committee (including the Executive Director/DBELO, Operations Manager, ITS Coordinator, Maintenance Supervisor, Data Analyst/EEO Officer, and Deputy Director/Marketing & Customer Service Manager) is charged with fostering small business participation. During the committee’s regular meeting cycle, upcoming contracting opportunities and projects will be reviewed, and one or more small business provisions identified above may be enacted prior to release for bid.

Small businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121). A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding 12 months or on sales volume averaged over a three-year period.

**Small Business Outreach:** MAX continues to hold membership and actively participate with programs offered from the Michigan West Coast Chamber of Commerce, which represents 1,300 businesses and 64,000 employees in the greater Holland and Zeeland area. The Chamber represents a broad segment of the business community through its role in connecting businesses to the people and resources needed to grow and succeed. Additional information can be found at the Michigan West Coast Chamber of Commerce’s website found at: [www.westcoastchamber.org](http://www.westcoastchamber.org)

The MAX website includes its most current DBE Program, as well as links to the following Small Business support programs:

- The Michigan Small Business Development Center (SBDC) provides consulting, training, and market research for new ventures, existing small businesses, and advanced technology companies: <https://sbdcmichigan.org/>
- MDOT has a Small Business Program (SBP) webpage with information on training and support: [www.michigan.gov/mdot/0,4616,7-151-9625\\_21539\\_85263---,00.html](http://www.michigan.gov/mdot/0,4616,7-151-9625_21539_85263---,00.html)
- The Procurement Technical Assistance Center of Michigan’s mission is to assist businesses in obtaining and performing on federal, state, and local government contract through seminars,

events, trainings, and consultations and by working to help local businesses succeed in the government marketplace: <http://www.ptacsofmichigan.org/>

- The USDOT Office of Small & Disadvantaged Business Utilization website provides additional information on programs available to small business: <https://www.transportation.gov/osdbu>

The Michigan Inter-Governmental Trade Network (MITN) purchasing group website is used for posting MAX's RFP/RFQ/IFB bid opportunities. The site allows vendors to register (either free or for a subscription charge) and view MAX's open bid opportunities as well as those of other governmental agencies: <https://www.bidnetdirect.com/mitn/macatawaareaexpresstransportationauthority>

MAX will continue to participate whenever possible in purchasing forums and similar offerings from the Michigan West Coast Chamber of Commerce, MDOT, and other programs and events that promote reaching out to DBEs and Small Business.

**Small Business Certification:** Michigan Department of Transportation (MDOT)—in accordance with the requirements of the U.S. Department of Transportation 49 CFR Part 26, Section 26.39—has developed a race- and gender-neutral Small Business Program (SBP) to ensure that Disadvantaged Business Enterprises (DBE) and SBP owned businesses have opportunities to participate on federally-assisted projects.

The SBP is designed to increase the number of competitively awarded contracts to small businesses, maximize contract opportunities, and promote the use of small businesses in MDOT contract opportunities. Eligibility requirements to become certified can be found on the MDOT website: [https://www.michigan.gov/mdot/0,4616,7-151-9625\\_21539\\_85263---,00.html](https://www.michigan.gov/mdot/0,4616,7-151-9625_21539_85263---,00.html)

For purposes of verifying and identifying size standards in determining actual Small Business Enterprise designation, a copy of *U.S. Small Business Administration / Table of Small Business Size Standards Matched to North American Industry Classification System Codes (August 19, 2019)* will be used and maintained on file, and reviewed annually for updated versions at the website: [www.sba.gov](http://www.sba.gov)

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The Macatawa Area Express Transportation Authority does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program.

In accordance with Section 26.45(f) the Macatawa Area Express Transportation Authority will submit its overall goal to DOT via TrAMS by August 1 every three (3) years, though the overall goal will apply to each year during that three-year cycle. MAX will consult the MUCP to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Macatawa Area Express Transportation Authority's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, MAX publish a notice of the proposed overall goals, informing the public that the proposed goal and rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that MAX and DOT will accept comments on the goals for 30 days from the date of the notice. The notice will be posted on homepage of the MAX website and will include an address where the DBE Program and goals can be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

MAX begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

**Section 26.47 Failure to Meet Overall Goals**

The Macatawa Area Express Transportation Authority Management Committee (including the Executive Director/DBELO, Operations Manager, Buildings & Grounds Supervisor, ITS Coordinator, Safety & Training Coordinator, Data Analyst/EEO Officer, and Deputy Director/Marketing & Customer Service Manager) shall, at a minimum, annually—particularly in event the overall annual DBE goal was not met nor exceeded—record and review the following steps in keeping the management of its DBE program in good faith and standing with FTA:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year.
2. Establish specific steps and milestones to correct the problems identified in the previous analysis and to enable full attainment of the new fiscal year.
3. Retain the analysis and corrective action report for a minimum of three (3) years and make it available to FTA upon request for review.

**Section 26.49 Transit Vehicle Manufacturers Goals**

The Macatawa Area Express will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the Macatawa Area Express Transportation Authority may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

NOTE: The Macatawa Area Express Transportation Authority does not include FTA assistance used in transit vehicle procurements in the base amount from which its overall DBE goal is calculated. TVMs must have an approved DBE program and goal on file with the HQ office of the FTA Office of Civil Rights. The TVM DBE program is a one-time submission and does not need to be updated annually—however—TVM DBE goal methodology submission must be done each fiscal year, and a listing of all TVMs in compliance with DOT’s DBE requirements are on FTA’s Website. MAX can also verify the TVM status with FTA—through FTA’s Website Eligibility List during the appropriate fiscal year—before approving a transit vehicle bid to ensure their DBE program and goal are compliant with the regulation.

MAX relays all transit vehicle awards (within 30 days of award) via FTA’s Vehicle Award Report:

**Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The Macatawa Area Express Transportation Authority will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Macatawa Area Express Transportation Authority follows a purchasing process required by FTA procurement regulations that is intended to provide an open, equal ability for participation by all potential bidders, including DBEs and small businesses.

Additional details can be found in Attachment 4, *Overall Goal Calculations & Methodology*.

**Section 26.51(d-g) Contract Goals**

The Macatawa Area Express Transportation Authority will establish contract goals only on those DOT-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 work location, availability of DBEs to perform the particular type of work.)

Should our DBE goal for contracts performed during an annual period are not at a level for attainment part way through that annual period, MAX can begin setting race-conscious DBE contract goals during the remainder of the year as part of its obligation to implement the program in good faith.

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

**State or Local MWBE Program Contract Goals (April 25, 2018)**

State and local business participation program goals (Minority and Women-owned Business Enterprise (MWBE) cannot be applied to federal-aid contracts.

**Section 26.53 Good Faith Efforts Procedures**Demonstration of good faith efforts (26.53(a) & (c))

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.

Further guidance and examples of good faith efforts are found in Appendix A to Part 26, revised June 25, 2013.

The MAX Executive Director is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

We will ensure that all information is timely, complete, and accurate, and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

The Macatawa Area Express Transportation Authority treats bidder/offers' compliance with Good Faith Efforts' (GFE) requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following DBE participation documentation at the time of bid (as a matter of responsiveness) or no later than 5 calendar days after bid opening (as a matter of responsibility):

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, including NCAIS code(s) for the kind of work the DBE will be performing; each DBE firm must be certified in a NCAIS code applicable to the kind of work the firm would perform on the contract;

3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
5. Written and signed confirmation from each DBE that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
6. A complete signed copy of the contract entered into with the DBE subcontractor to ensure that the terms of the agreement—including the termination (26.53(g), prompt payment/return of retainage (26.29), and assurance ((26.13(b)) provision—are consistent with MAX's DBE Program Plan, and federal regulations; and
7. If the contract goal is not met, evidence of good faith efforts. Documentation must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;

At the discretion of the Authority, this information must be presented by the bidder/offeror:

- a) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
- b) No later than 5 days after bid opening as a matter of responsibility. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by the six steps listing above before the final selection for the contract is made by the recipient.

#### Administrative reconsideration (26.53(d))

Within 30 days of being informed by the Macatawa Area Express Transportation Authority that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Transportation Services Director, 333 Wyngarden Way, Holland MI 49423. The reconsideration official 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. 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 Department of Transportation.

#### Prime Contract Provisions (26.53(f))

Each prime contract will include a provision stating:

1. That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent; and
2. That, unless consent from the Authority is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Good Faith Efforts when a DBE is replaced on a contract (26.53(g))

The Macatawa Area Express Transportation Authority will require a contractor to make and document 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—and not to terminate or replace a DBE firm without MAX's prior written consent—of the DBE's inability or unwillingness to perform, and for the contractor to provide documentation.

In this situation, we will also 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—within 7 days after obtaining approval to terminate an existing DBE. Recipients may extend the time for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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. Other sanctions include liquidated damages, disqualifying the contractor from future bidding, and assessing monetary penalties. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding. Specified good cause determinants for terminating a DBE subcontractor are detailed in 76 CFR 5097, Jan 28, 2011.

Prior to transmitting a request to terminate and/or substitute a DBE subcontractor, MAX will require the prime contractor to give notice in writing to the DBE subcontractor—with a copy provided to the Authority—of its intent to request to terminate and/or substitute, and the reasoning for the request. The prime contractor must give the DBE five (5) days to respond to its notice and advise both the Authority and the contractor of the reasons, if any, why it objects to the proposed termination, and why it should not approve the prime contractor's action. If a matter of public necessity (e.g., safety), a response period may be less than five (5) days.

Additional DBE Subcontractor Requirements:

The contractor awarded a contract will be required to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of MAX to practice non-discrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform, and applicable NAICS code(s); (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. Documentation must include copies

of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract

### **Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The certification standards of Subpart D of Part 26 will be used to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

For information about the certification process or to apply for certification, firms should contact:

Michigan Department of Transportation  
Dr. Patricia Collins, Business & Administrative Services  
PO Box 30050  
Lansing MI 48909  
1-866-323-1264

For information on how to become certified please visit the website:

<https://mdotjboss.state.mi.us/UCP/LearnHowServlet>

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

MAX is the member of a Unified Certification Program (UCP) administered by the Michigan Department of Transportation. The UPC will meet all of the requirements of this section. The following is a description of the UCP from its website:

“Welcome to the Michigan Unified Certification Program (MUCP) website. This site provides a searchable directory of all current Michigan Disadvantaged Business Enterprise (DBE) certified firms. We have forms, applications, news, current events, other important websites, and information to help businesses working in Michigan.”

“The purpose of the MUCP is to provide ‘one-stop shopping’ for everyone seeking to be certified. The MUCP makes decisions on behalf of all businesses in the state of Michigan that want to be certified DBEs and represents all USDOT funded agencies with DBE programs. In other words, firms certified as DBEs with the MUCP are eligible to work on any federally-funded airport, highway or transit contract, as a DBE.”

### **Section 26.83 Procedures for Certification Decisions**

MAX intends to rely on the MUCP and does not intend to certify DBE firms.

### **Section 26.85 Denials of Initial Requests for Certification**

MAX intends to rely on the MUCP and does not intend to certify DBE firms.

### **Section 26.87 Removal of a DBE’s Eligibility**

In the event we propose to remove a DBE’s certification, we will follow procedures consistent with 26.87. The State of Michigan will be the entity to remove a DBEs certification.

**Section 26.89 Certification Appeals**

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
400 7th Street, SW  
Room 2104  
Washington DC 20590

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

**SUBPART F – COMPLIANCE AND ENFORCEMENT****Section 26.109 Information, Confidentiality, Cooperation, & Intimidation or Retaliation**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Macatawa Area Express Transportation Authority will not release personal financial information submitted in response to the personal net worth requirement or any other supporting information to a third party (other than DOT) without the written consent of the submitter.

**Monitoring Payments to DBEs**

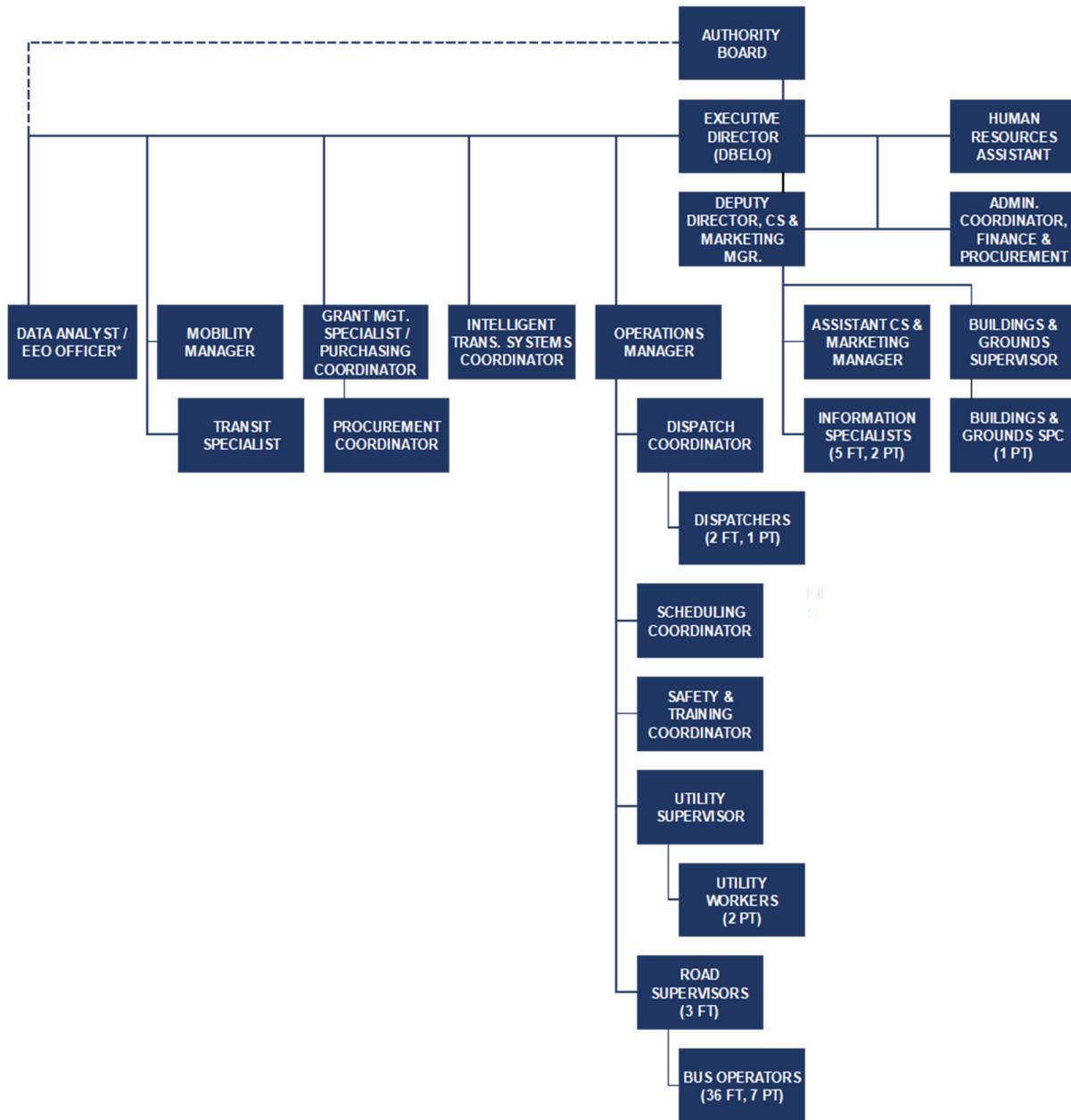
We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Macatawa Area Express Transportation Authority or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

**ATTACHMENTS**

ATTACHMENT 1	Organizational Chart
ATTACHEMNT 2	DBE Directory
ATTACHMENT 3	Monitoring and Enforcement Mechanisms
ATTACHMENT 4	Overall Goal Calculation & Methodology
ATTACHMENT 5	Form 1 & 2 for Demonstration of Good Faith Efforts
ATTACHMENT 6	Certification Application Forms
ATTACHMENT 7	Procedures for Removal of DBE's Eligibility
ATTACHMENT 8	Regulations: 49 CFR Part 26
ATTACHMENT 9	Uniform Report on DBE Awards, Commitments, & Payments
ATTACHMENT 10	Instructions for Completing the Uniform Report of DBE Awards/Commitments, and Payments
ATTACHMENT 11	Commercially Useful Function (CUF) Review Form

ATTACHMENT 1

Organizational Chart: Last Updated December 2022



\*Data Analyst/EEO Officer reports to Authority Board for EEO matters, reports to Executive Director for all other areas.

**ATTACHMENT 2****DBE Directory**

The Macatawa Area Express does not maintain a directory identifying all firms eligible to participate as DBEs, but instead makes use of the MUCP DBE Directory, the latest version can be downloaded from the website <https://mdotcf.state.mi.us/public/docs/mucp/files/DBEUCPDirectory.pdf>

The MUCP directory can also be viewed at the MAX administrative offices. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The directory is revised annually

**ATTACHMENT 3****Monitoring & Enforcement Mechanisms**

The Macatawa Area Express Transportation Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 4****Macatawa Area Express (MAX) Transportation Authority****Holland, Michigan****Overall Goal Calculation & Methodology****Introduction**

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 26, the Macatawa Area Express Transportation Authority (MAX) presents its overall Disadvantaged Business Enterprise (DBE) goal and goal methodology for federal fiscal years 2022 through 2024. The purpose of the DBE goal-setting process is to level the playing field so that DBE firms can fairly compete for contracts with funding assistance from the Department of Transportation while ensuring that the program is narrowly tailored in accordance with applicable law.

This report complies with the Disadvantaged Business Enterprise (DBE) rule in Title 49 Code of Federal Regulations Part 26 (49 CFR 26) and details the Macatawa Area Express Transportation Authority's process for setting the Federal Fiscal Year (FFY) 2022-2024 overall 3-year goal for DBE participation in federally assisted transit projects.

As a recipient of federal financial assistance—and as a condition of receiving this assistance—MAX has signed an assurance that it will comply with the DBE program requirements set forth in 49 CFR 26. Requirements include a three-year DBE goal be submitted for review by the Federal Transit Administration. This submission includes 1) a description of the methodology used to establish the goal, including the base figure and evidence with which it was calculated, and the evidence relied on if any adjustments were applied; and 2) a projection of the portions of the overall goal expected to be met through race/gender neutral and/or race/gender conscious measures.

Pursuant to USDOT regulations adopted under 49 CFR Part 26 which went into effect in FY 2000, MAX has adopted percentage goals for DBE participation which are consistent with MAX's own spending patterns and with the amount of DBE participation that would be expected to be achievable in a race/gender neutral marketplace.

For any questions or comments, please contact:

Charles Veldhoff, Data Analyst/EEO Officer  
Macatawa Area Express (MAX) Transportation Authority  
171 Lincoln Ave., Suite 20  
Holland, MI 49423  
Phone: 616.218.0775  
Email: [c.veldhoff@catchamax.org](mailto:c.veldhoff@catchamax.org)

The overall goal is developed by a two-step method set forth within the federal regulations as defined in 49 CFR Part 26.45. The base figure was determined by forecasting projected projects using federal funds. Over the next three years, MAX will continue to invest in the maintenance of its facilities and vehicles, including rehabilitation of the Padnos Transportation Center while also targeting IT improvements. The base figure for the next three years consists in part on these capital investment projects, in addition to general operational support opportunities in such areas as grounds maintenance and snow removal,

marketing, printing, and advertising, vehicle tires and parts, legal services, office supplies, and electrical and HVAC contracting.

Anticipated work categories using FTA assisted contracts in the coming three (3) fiscal years (those using federal funds) have been identified in Table 1, including their respective cost breakdowns. The information for the categories of work and related North American Industry Classification System—or NAICS—codes are provided for purposes of weighing the categories of work based on staff estimates:

**TABLE 1**

	NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
1)	236220	Commercial & Institutional Building Construction	\$87,680.00	0.1498
2)	541512	Computer System Design & Related Services	\$14,707.00	0.0251
3)	541430	Graphic Design Services	\$2,104.00	0.0036
4)	238210	Electrical Contracting	\$4,995.00	0.0085
5)	238220	Plumbing, Heating, & Air-Conditioning Contractors	\$7,363.00	0.0126
6)	561720	Janitorial Services	\$2,087.00	0.0036
7)	561730	Landscaping Services	\$2,555.00	0.0044
8)	541110	Offices of Lawyers	\$25,861.00	0.0442
9)	453210	Office Supplies & Stationery Stores	\$54,228.00	0.0926
10)	541611	Management Consulting Services	\$7,515.00	0.0128
11)	424710	Petroleum Bulk Stations & Terminals	\$269,000.00	0.4595
12)	323111	Printing	\$16,095.00	0.0275
13)	441320	Tire Dealers	\$19,704.00	0.0337
14)	488410	Motor Vehicle Towing	\$2,738.00	0.0047
15)	812331	Linen & Uniform Supply	\$9,724.00	0.0166
16)	811111	General Automotive Repair	\$3,614.00	0.0062
17)	423120	Motor Vehicle Supplies & New Parts	\$36,495.00	0.0623
18)	238110	Poured Concrete Foundation & Structure Contractors	\$19,000.00	0.0325
<b>Total FTA-Assisted Contract Funds</b>			<b>\$585,465.00</b>	<b>1</b>

### Step 1: Establishing the Relative Availability of DBEs and the Base Figure

Step one consists of determining the relative availability of DBEs (both prime contractors and subcontractors) to perform the types of contracts that MAX intends to let. The prescribed methodology was followed to determine relative availability. The **local market area** for contracts has been established as the four-county area surrounding MAX's service area consisting of Allegan, Kent, Muskegon, and Ottawa counties. Traditionally, this is the market area from which past contracts have been drawn.

Determining the final base figure percentage involves a process of calculations which utilize the most refined data available for:

- dividing the number of DBE firms identified for each North American Industry Classification System (NAICS) work category who are “ready, willing, and able” to bid for the types of work MAX will fund during FYs 2022-2024 by the number of all firms (DBE's and non-DBEs) also “ready, willing, and able” to bid for MAX projects (relative availability);
- weighing the relative availability for each work category based on the work category weight that corresponds with the estimated percentage of total FTA dollars per NAICS;
- and determining the sum of the weighted ration figures.

Table 2 shows the Relative Availability of DBEs following a local area market search in the MDOT-MUCP (Michigan Unified Certification Program) Directory in relation to the *U.S. Census Bureau 2018 Annual Economic Surveys* for Allegan, Kent, Muskegon, & Ottawa counties:

**TABLE 2**

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	236220	Commercial & Institutional Building Construction	130	172	0.7558
2)	541512	Computer System Design & Related Services	104	363	0.2865
3)	541430	Graphic Design Services	48	70	0.6857
4)	238210	Electrical Contracting	54	268	0.2015
5)	238220	Plumbing, Heating, & Air-Conditioning Contractors	51	366	0.1393
6)	561720	Janitorial Services	27	237	0.1139
7)	561730	Landscaping Services	59	402	0.1468
8)	541110	Offices of Lawyers	0	408	0.0000
9)	453210	Office Supplies & Stationery Stores	0	19	0.0000
10)	541611	Management Consulting Services	284	364	0.7802
11)	424710	Petroleum Bulk Stations & Terminals	0	10	0.0000
12)	323111	Printing	12	127	0.0945
13)	441320	Tire Dealers	0	58	0.0000
14)	488410	Motor Vehicle Towing	0	35	0.0000
15)	812331	Linen & Uniform Supply	4	6	0.6667
16)	811111	General Automotive Repair	0	390	0.0000
17)	423120	Motor Vehicle Supplies & New Parts	4	79	0.0506
18)	238110	Poured Concrete Foundation & Structure Contractors	35	101	0.3465
<b>Combined Totals</b>			<b>812</b>	<b>3475</b>	<b>0.2337</b>
					<i>Overall availability of DBEs</i>

The result of the Overall Availability of DBEs is 23.37%, as shown in Table 2 above.

Table 3 shows the calculation of the Weighted Base Figure for the DBE Goal:

**TABLE 3**

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1)	236220	Commercial & Institutional Building Construction	0.14976	x	0.75581	0.1132
2)	541512	Computer System Design & Related Services	0.02512	x	0.28650	0.0072
3)	541430	Graphic Design Services	0.00359	x	0.68571	0.0025
4)	238210	Electrical Contracting	0.00853	x	0.20149	0.0017
5)	238220	Plumbing, Heating, & Air-Conditioning Contractors	0.01258	x	0.13934	0.0018
6)	561720	Janitorial Services	0.00356	x	0.11392	0.0004
7)	561730	Landscaping Services	0.00436	x	0.14677	0.0006
8)	541110	Offices of Lawyers	0.04417	x		
9)	453210	Office Supplies & Stationery Stores	0.09262	x		
10)	541611	Management Consulting Services	0.01284	x	0.78022	0.0100
11)	424710	Petroleum Bulk Stations & Terminals	0.45946	x		
12)	323111	Printing	0.02749	x	0.09449	0.0026
13)	441320	Tire Dealers	0.03366	x		
14)	488410	Motor Vehicle Towing	0.00468	x		
15)	812331	Linen & Uniform Supply	0.01661	x	0.66667	0.0111
16)	811111	General Automotive Repair	0.00617	x		
17)	423120	Motor Vehicle Supplies & New Parts	0.06234	x	0.05063	0.0032
18)	238110	Poured Concrete Foundation & Structure Contractors	0.03245	x	0.34653	0.0112
					<b>Total</b>	<b>0.1655</b>
					<b>Expressed as a % (*100)</b>	<b>16.55%</b>
					<b>Rounded, Weighted Base Figure:</b>	<b>17%</b>

The result of the Weighted Base Figure calculation is 16.55%.

## Step 2: Adjustment to the Base Figure

Resulting from an initial Base Figure calculation significantly higher than anticipated, the Macatawa Area Express Transportation Authority—for purposes of ensuring accuracy in the establishment of its DBE goals—has determined an adjustment to the initial Base Figure is both necessary and reasonable. Staff reviewed and assessed all known information that could potentially impact the overall DBE goal calculation, and included this narrative—along with updated calculations—in the following paragraphs of this section.

Information that was considered in adjusting the Base Figure included:

- A thorough review of the search data returned from the MDOT-MUCP Directory.
- Past race/gender neutral participation and bidding/award history.
- Recent local market conditions, in relation to the number of DBE firms.

During review of the MDOT-MUCP Directory, search inquiries can only be performed on a county-by-county basis—which oftentimes counts a single DBE firm more than once as data is returned for each county within the local market area. Initial calculations also contained registered DBEs based outside the local market area, including metro-Detroit, and in some instances, other states—all of which are well beyond MAX’s traditional sphere of business. Provided the NAICS Codes in which MAX anticipates bidding opportunities and the business nature of those firms, it was not determined reasonable to expect participation from DBEs based at such distances outside the identified four-county local market area.

To enable the calculation of a DBE Goal that is not only more accurate but based on demonstrable evidence of local market conditions, MAX has utilized an alternative approach that includes using a count of registered DBE firms located *within* the local market area as found in the MDOT-MUCP Directory, as well as considering the DBEs listed in MAX’s Bidders List, some of whom have bid and won past contracts.

An adjusted Table 2 shows a revised Relative Availability of DBEs in relation to the *U.S. Census Bureau 2018 Annual Economic Surveys* for Allegan, Kent, Muskegon, & Ottawa Counties:

**TABLE 2 (ADJUSTED)**

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability	
1)	236220	Commercial & Institutional Building Construction	3	172	0.0174	
2)	541512	Computer System Design & Related Services	0	363	0.0000	
3)	541430	Graphic Design Services	0	70	0.0000	
4)	238210	Electrical Contracting	1	268	0.0037	
5)	238220	Plumbing, Heating, & Air-Conditioning Contractors	1	366	0.0027	
6)	561720	Janitorial Services	1	237	0.0042	
7)	561730	Landscaping Services	0	402	0.0000	
8)	541110	Offices of Lawyers	0	408	0.0000	
9)	453210	Office Supplies & Stationery Stores	0	19	0.0000	
10)	541611	Management Consulting Services	2	364	0.0055	
11)	424710	Petroleum Bulk Stations & Terminals	0	10	0.0000	
12)	323111	Printing	0	127	0.0000	
13)	441320	Tire Dealers	0	58	0.0000	
14)	488410	Motor Vehicle Towing	0	35	0.0000	
15)	812331	Linen & Uniform Supply	0	6	0.0000	
16)	811111	General Automotive Repair	0	390	0.0000	
17)	423120	Motor Vehicle Supplies & New Parts	0	79	0.0000	
18)	238110	Poured Concrete Foundation & Structure Contractors	2	101	0.0198	
		<b>Combined Totals</b>	<b>10</b>	<b>3475</b>	<b>0.0029</b>	<b>Overall availability of DBEs</b>

The result of the revised Overall Availability of DBEs is 0.29%, as shown in Table 2 (*Adjusted*) above.

An adjusted Table 3 shows the calculation of the Weighted Base Figure for the DBE Goal:

**TABLE 3 (ADJUSTED)**

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1) 236220	Commercial & Institutional Building Construction	0.14976	x	0.01744	0.0026
2) 541512	Computer System Design & Related Services	0.02512	x		
3) 541430	Graphic Design Services	0.00359	x		
4) 238210	Electrical Contracting	0.00853	x	0.00373	0.0000
5) 238220	Plumbing, Heating, & Air-Conditioning Contractors	0.01258	x	0.00273	0.0000
6) 561720	Janitorial Services	0.00356	x	0.00422	0.0000
7) 561730	Landscaping Services	0.00436	x		
8) 541110	Offices of Lawyers	0.04417	x		
9) 453210	Office Supplies & Stationery Stores	0.09262	x		
10) 541611	Management Consulting Services	0.01284	x	0.00549	0.0001
11) 424710	Petroleum Bulk Stations & Terminals	0.45946	x		
12) 323111	Printing	0.02749	x		
13) 441320	Tire Dealers	0.03366	x		
14) 488410	Motor Vehicle Towing	0.00468	x		
15) 812331	Linen & Uniform Supply	0.01661	x		
16) 811111	General Automotive Repair	0.00617	x		
17) 423120	Motor Vehicle Supplies & New Parts	0.06234	x		
18) 238110	Poured Concrete Foundation & Structure Contractors	0.03245	x	0.01980	0.0006
				<b>Total</b>	0.0034
				<b>Expressed as a % (*100)</b>	0.34%
				<b>Weighted Base Figure:</b>	<b>0.34%</b>

The result of the revised Weighted Base Figure calculation is 0.34%, as shown in Table 3 above.

The review of DBE participation levels from prior years was also used in determining that a more narrowly tailored, logical, and realistic DBE Goal is determined. Past DBE Goal attainment is highlighted in Table 4 below, whereby the median past participation value has been identified from the most recently completed five (5) fiscal years of data:

**TABLE 4**  
Past DBE Goals & Five-Year Participation

Fiscal Year	DBE Goal	Actual Participation
2021	0.22%	7.59%
2020	0.22%	0.00%*
2019	0.22%	0.00%
2018	0.25%	0.15%
2017	0.25%	0.00%

Median Participation Value = 0.00%

\*Per FTA, non-Michigan DBE participation (0.50% in FY2020) cannot be credited in DBE financial reporting and goal calculations.

The results of the five-year DBE Goal attainment for FYs 2016-2020 reflect a median value of 0.00%, which is lower than the Base Figure calculation from the adjusted Table 3. The Macatawa Area Express

Transportation Authority recognizes further adjustment to the Base Figure is both reasonable and appropriate, based on the following rationale:

- Local market conditions—relatively limited availability of DBEs in the four-county local market area (Allegan, Kent, Ottawa, and Muskegon counties), including no net change in the overall number of area DBE firms (22) since FYs 2019-2021 DBE Goal Methodology submission.
- Review of past race/gender neutral participation and bidding history; the base figure and level of past participation are not reasonably similar; typically, lower to no DBE participation.

$$\text{Adjusted Base Figure} = (\text{DBE Median Past Participation}^* + \text{Adjusted Base Goal 2022-2024}) / 2$$

$$\text{DBE Median Past Participation}^* = 0.00\%$$

$$(0.00\% + 0.34\%) / 2 = 0.17\%$$

\*If you have an odd number of values from which to determine the median, just take the number which falls in the middle. For example, 3 is the median of 1, 3, and 6. If you have an even number of values, then you should average the two numbers which fall in the middle. For example, if you have the numbers 1, 3, 6, and 8, the median would be an average of 3 and 6, or 4.5. If you have two numbers, simply average the two numbers together.

#### **Additional Note on the Seeking of DBE Participation**

The nature of the product or service sought will be additionally considered as individual bidding opportunities arise. In the effort to increase further participation from DBE firms, the Macatawa Area Express Transportation Authority recognizes the importance of seeking additional bidding opportunities from DBE firms *outside* the local area for the sourcing of specialty products or consulting services—for example, translation services—whereby the material can be transmitted electronically, not necessarily requiring a local source to be utilized.

#### **Race/Gender-Neutral and Race/Gender-Conscious Determination**

The establishment of specific contract goals for DBE participation is called a **Race-Conscious (RC)** measure. **Race-Neutral (RN)**, on the other hand, is a measure or program that is used to assist all small businesses. The RN approach allows all small businesses to compete with each other, including DBEs.

MAX will seek to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation; the FYs 2022-2024 Macatawa Area Express Transportation Authority's DBE goal will include only a race/gender neutral goal.

#### **Calculation of Race-Neutral and Race-Conscious Split**

As mentioned in the previous section, MAX will seek to meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The reasoning is MAX currently has a limited history of past DBE participation upon which to reasonably base a race-conscious/race-neutral breakout:

$$\begin{aligned} \text{Relative RN Attainment} &= \text{RN Attainment} / \text{Overall DBE Achievement} \\ &= 0.05\% / 0.05\% = 1 \end{aligned}$$

$$\begin{aligned} \text{Absolute RN Attainment} &= \text{Relative RN Attainment} \times \text{Proposed DBE Goal} \\ &= 1 \times 0.17\% = 0.17\% \end{aligned}$$

$$\begin{aligned} \text{RC Split} &= \text{Proposed DBE Goal} - \text{Absolute RN Attainment} \\ &= 0.17\% - 0.17\% = 0 \end{aligned}$$

MAX estimates that, in meeting the overall goal of 0.17% for Fiscal Years 2022-2024, the Authority will obtain 0.17% from Race-Neutral participation and 0.00% through race-conscious measure.

For reporting purposes, MAX will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation. Furthermore, all race-neutral and race-conscious DBE participation will be tracked and reported separately. Race/gender-neutral DBE participation includes—but is not limited to—the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contract that did not consider the firm's DBE status in making the award.

### **Disparity Studies and Other Evidence of Discrimination**

There were no available studies performed within the market area.

### **Use of a Base Figure from Another Recipient's Goal**

The base figure used for MAX's FY 2022-2024 DBE goal is not based on the DBE goal or objective of another recipient, therefore neither adjustment for differences in our local market nor our contracting program has been made.

### **The DBE Goal for Fiscal Years 2022-2024 has been determined to be 0.17%**

***(0.17% Race/Gender Neutral Participation, 0.00% Race/Gender Conscious Participation)***

### **Public Notice and Meaningful Consultation**

The Macatawa Area Express Transportation Authority (MAX) will submit its overall DBE three-year goal via TrAMS as required by the set FTA schedule.

MAX continues its efforts to establish a level playing field for DBE and non-DBE participation on Authority contracts. As part of this program's outreach efforts, a communication was sent to local minority, women, state, and/or business development organizations not only to provide an opportunity to understand our goal methodology process, offer feedback, and strategize way to attract DBEs, but in order to obtain additional information regarding the availability of disadvantaged and small businesses, potential social or economic barriers, historic or current discriminatory practices which may prevent disadvantaged, women, or small business participation in Authority-related bidding opportunities.

Following the consultation period, MAX will publish a notice on its website of the proposed overall goal and methodology, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the MAX Administrative Offices for 30 days following the date of the notice, and informing the public that MAX will accept comments on the goals for 30 days from the date of the notice. ***Due to COVID-19, only the online posting option will be used for public review.***

As part of this DBE goal submission, a summary of information and comments received from contacted organizations as well as the general public will be provided in the section *DBE Outreach Summary for Fiscal Years 2022-2024*. A copy of the public notice and all comments received will be documented as well.

**DBE Outreach Summary for Fiscal Years 2022-2024**

1. MAX continues to hold membership and actively participate with programs offered from the Michigan West Coast Chamber of Commerce, which represents 1,300 businesses and 64,000 employees in the greater Holland/Zeeland area. The Chamber represents a broad segment of the business community through its role in connecting businesses to the people and resources needed to grow and succeed. MAX will continue to participate whenever possible in purchasing forums and similar offerings from the Michigan West Coast Chamber of Commerce, MDOT, and other programs and events that promote reaching out to DBEs and Small Business.
2. The following minority, women, state, and/or business development organizations were provided an opportunity to review and comment on our goal analysis and sent DBE Goal consultation notices on **Wednesday & Thursday, March 24 & 25, 2021.**

Elizabeth Butler, Director of Economic Development Strategic Directions  
The Chamber of Commerce, Grand Haven-Spring Lake-Ferrysburg  
One South Harbor Drive, Grand Haven MI 49417  
616-842-4910 ext. 111  
[ebutler@grandhavenchamber.org](mailto:ebutler@grandhavenchamber.org)

Yadah V. Ramirez, Programs Director  
Latin Americans United for Progress  
238 W. 15th Street, Holland MI 49423  
616-594-7108  
[yadah@laup.org](mailto:yadah@laup.org)

Heather Schaedig, Executive Director  
Grandville-Jenison Chamber of Commerce  
2939 Wilson Avenue, Suite 106, Grandville MI 49418  
616-531-8890  
[heather@grandjen.com](mailto:heather@grandjen.com)

Jane Clark, President & CEO  
Michigan West Coast Chamber of Commerce  
272 E. 8th Street, Holland MI 49423  
616-392-2389  
[jane@westcoastchamber.org](mailto:jane@westcoastchamber.org)

Dante Villarreal, Vice President of Business & Talent Development,  
Grand Rapids Area Chamber of Commerce  
250 Monroe Avenue NW, Grand Rapids MI 49503  
616-771-0314  
[dante@grandrapids.org](mailto:dante@grandrapids.org)

Jamaal Ewing, Economic Inclusion Business Consultant  
Michigan Small Business Development Center  
Grand Valley State University  
1087 L. William Seidman Center  
50 Front Ave. SW, Grand Rapids MI 49504  
616-331-7277  
[ewingri@gvsu.edu](mailto:ewingri@gvsu.edu)

Due to ongoing COVID-19 restrictions and logistics, Microsoft Teams meeting times were provided to interested parties, from which one (1) meeting was held. General minority, women, and veteran vendor outreach ideas were shared, and additional vendor data-collection suggestions were offered.

Following the DBE Goal consultation process with the public, no formal comment was received, and no changes were made to the goal as a result.

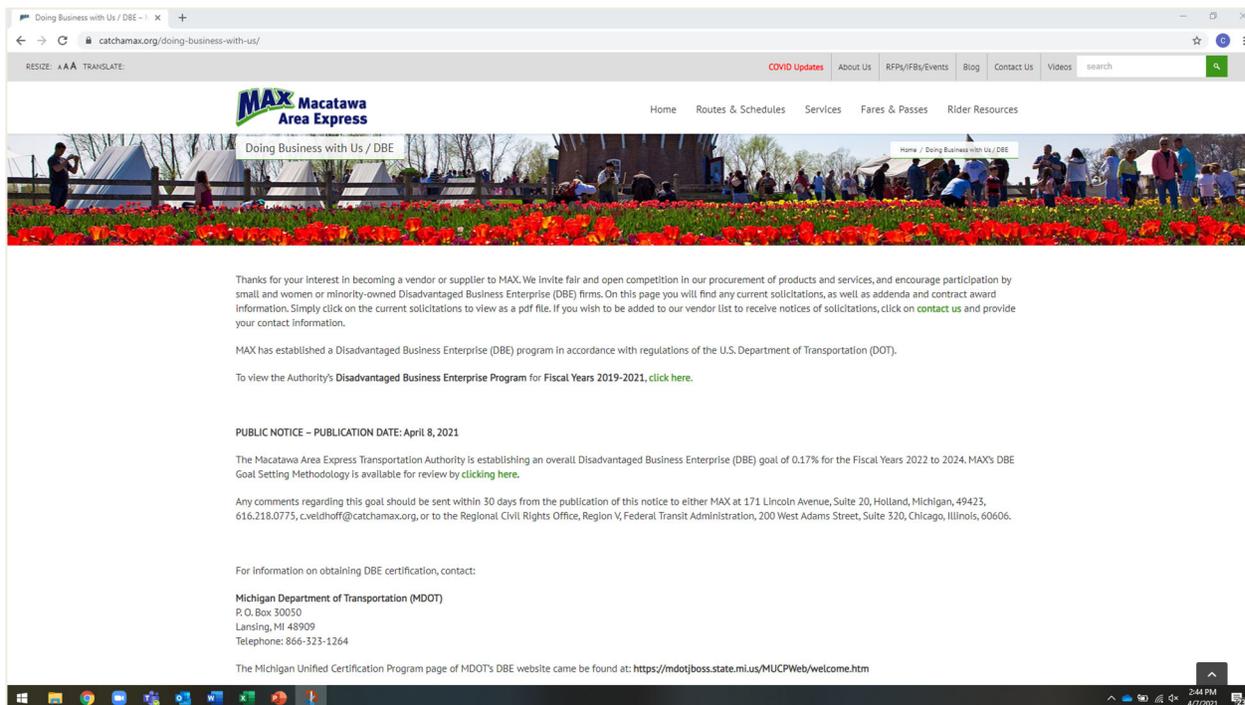
3. The Macatawa Area Express Transportation Authority is a member in the Michigan Unified Certification Program (MUCP). The MUCP exists to provide an effective means of communication, cooperation, and collaboration among the MUCP agencies, and to enhance our ability to encourage DBE firms to become certified and participate in transit projects.
4. A notice was placed on the Authority website inviting officials and organizations to participate and comment on the development of the FY 2022-2024 DBE Goal. A period of 30 days is allowed for comments and suggestions in developing the FY 2022-2024 DBE goals. The 30-day period was from April 8, 2021 to May 18, 2021 (date posting removed), during which time **no comment** was made.

#### PUBLIC NOTICE

The Macatawa Area Express Transportation Authority is establishing an overall Disadvantaged Business Enterprise (DBE) goal of 0.17% for the Fiscal Years 2022 to 2024. MAX's DBE Goal Setting Methodology is available for review by [clicking here](#).

Any comments regarding this goal should be sent within 30 days from the publication of this notice to either MAX at 171 Lincoln Avenue, Suite 20, Holland, Michigan, 49423, 616.218.0775, [c.veldhoff@catchamax.org](mailto:c.veldhoff@catchamax.org), or to the Regional Civil Rights Office, Region V, Federal Transit Administration, 200 West Adams Street, Suite 320, Chicago, IL 60606.

A screenshot of the web posting is included below:



**ATTACHMENT 5**

**Forms 1 & 2 For Demonstration of Good Faith Efforts**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_%) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

NCAIS Code(s): \_\_\_\_\_

Description of work to be performed by DBE firm:

-----  
-----  
-----  
-----

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each DBE subcontractor.)

**ATTACHMENT 6**

**Certification Application Forms**

Applications to become certified as a DBE are available online at:

<https://mdotjboss.state.mi.us/UCP/LearnHowServlet>

An application can also be obtained at the MAX Administrative offices.

**ATTACHMENT 7****Procedures For Removal of DBE's Eligibility**

The procedures for removal of DBE eligibility can be found online at:

[http://www.michigan.gov/documents/mdot/MDOT\\_FY12\\_PROGRAM\\_PROC\\_FINAL\\_393921\\_7.pdf](http://www.michigan.gov/documents/mdot/MDOT_FY12_PROGRAM_PROC_FINAL_393921_7.pdf)

The Macatawa Area Express Transportation Authority does not certify DBE firms.

**ATTACHEMNT 8**

**Regulations: 49 CFR Part 26**

49 CFR Part 26 can be found online at:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-regulations>

or can be obtained at the MAX administrative offices.

ATTACHMENT 9

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
**Please refer to the instruction sheet for directions on filling out this form**										
1	Submitted to (check only one)	<input 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			4. Date This Report Submitted:					
5	Reporting Period	<input type="checkbox"/> Report due June 2 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)			<input type="checkbox"/> FAA annual report due Dec 1		
6	Name and address of Recipient:									
7	Annual DBE Goal(s):	Race Conscious Projection:			Race Neutral Projection:			OVERALL Goal:		
Awards/Commitments this Reporting Period										
A	<b>AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD</b> <small>(Total contracts and subcontracts committed during this reporting period)</small>	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period	\$ -	0	\$ -	0		\$ -	0	-	
9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -	0	\$ -	0	
10	<b>TOTAL</b>			\$ -	0	\$ -	0	\$ -	0	
B	<b>BREAKDOWN BY ETHNICITY &amp; GENDER</b>	A	B	C	D	E	F			
		Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11	Black American	\$ -	\$ -	\$ -	0	0	0			
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13	Native American	\$ -	\$ -	\$ -	0	0	0			
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0			
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0			
17	<b>TOTAL</b>	\$ -	\$ -	\$ -	0	0	0			
Payments Made this Period										
C	<b>PAYMENTS ON ONGOING CONTRACTS</b>	A	B	C	D	E	F			
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs			
18	Prime and subcontracts currently in	0	\$ -	0	\$ -	0	-			
D	<b>TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD</b>	A	B	C	D	E				
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs				
19	Race Conscious	0	\$ -	\$ -	\$ -	-				
20	Race Neutral	0	\$ -	-	\$ -	-				
21	<b>Totals</b>	0	\$ -	-	\$ -	-				
22	Submitted by:			23. Signature:			24. Phone Number:			

## ATTACHMENT 10

## INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
  2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
  3. Specify the Federal fiscal year (i.e. October 1-September 30) in which the covered reporting period falls.
  4. State the date of submission of this report.
  5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 - March 31. If this report is due December 1, data should cover April 1 - September 30.
  6. Name of the recipient.
  7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
  - 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
  - 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
  - 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
  - 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
  - 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
  - 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation in item 8 of project types to include in your calculation.
  - 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
  - 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation in item 8 of project types to include.
  - 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
  - 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
  - 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
  - 11(A)-17(F). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The TOTALS value in 17(C) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 17(F) should equal the sum of 8(D) plus 9(D).
  - 18(A)-18(F). Provide the total number of prime and subcontracts currently in progress in 18(A), and the total dollar paid in 18(B). From among these ongoing contracts, provide the total number of contracts with DBEs in 18(C), and the total payments to DBE firms made in 18(D). Provide the total number of DBE firms paid among the ongoing contracts in 18(E). Percent to DBEs in 18(F) will calculate automatically.
  - 19(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another race conscious measure.
  - 19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious goals.
  - 19(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
  - 19(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
  - 19(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.
  - 20(A)-20(E). Items 20(A)-20(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
  - 21(A)-21(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
  22. Name of the Authorized Representative preparing this form.
  23. Signature of the Authorized Representative.
  24. Phone number of the Authorized Representative.
- \*\*Submit your completed report to your Regional or Division Office.**

**ATTACHMENT 11**

[Clear Form](#)

Michigan Department  
of Transportation  
4109T (12/17)

**COMMERCIALLY USEFUL FUNCTION (CUF) REVIEW  
FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECTS**

Page 1 of 2

*Performance of a CUF review is required on each DBE subcontractor on a Michigan Department of Transportation let federally-assisted project. The review should be conducted when the DBE first begins work. Monitoring is to be done through the course of the project. Federal regulation 49 CFR 26.55 states: "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... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for obtaining DBE credit on this project.*

REVIEWER'S NAME (Print clearly)	REVIEWER'S AGENCY	REVIEWER'S PHONE NUMBER ( )
---------------------------------	-------------------	--------------------------------

PROJECT NUMBER (ID)	CONTRACT PERIOD
---------------------	-----------------

CONTRACT NUMBER

DESCRIBE DBE'S SCOPE OF WORK

<u>EMPLOYEES</u>	YES	NO	N/A
Does the DBE have employees on the job?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Do they appear on the DBE firm's payroll? If no, explain below:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does the DBE assign work to them?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<u>PERFORMANCE</u> Has any other contractor performed any of the DBE's work? If yes, explain below	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
---	--------------------------	--------------------------	--------------------------

<u>CUF</u> Does it appear the DBE is performing a CUF (See CUF explanation on back of form)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------	--------------------------

COMMENTS/EXPLANATIONS

The signature below is verification that the reviewer observed the DBE performing its commercially useful function. Any CUF problems were documented, addressed, and reported to the Office of Passenger Transportation (OPT).

REVIEWER'S SIGNATURE	DATE
----------------------	------

Within 10 days of signature, a copy of this completed form is to be faxed to: (517) 373-7997  
or e-mailed to: OPT Project Manager.

**ATTACHMENT 11 (CONTINUED)**

MDOT 4109T (12/17)

Page 2 of 2

**WHAT CONSTITUTES A COMMERCIALY USEFUL FUNCTION (CUF)?**

In order for a contractor to receive DBE credit on Michigan Department of Transportation projects the DBE must perform a CUF. To perform a CUF a DBE must carry out all contract responsibilities by performing, managing, and supervising its work while utilizing their own equipment. Also, the DBE must be paid in accordance with Michigan Department of Transportation guidelines.

**Five Key Areas to Monitor for CUF Compliance.**

1. DBE Company Management
2. DBE Equipment Handling
3. DBE Workforce
4. DBE Contractually Supplied Materials
5. DBE Performance

**CUF Violation Red Flags**Management

- Supervision of DBE employees done by another contractor.
- The DBE provides little or no supervision of contracted work.
- The DBE's superintendent is not a regular, full-time, exclusive employee of the DBE.
- Supervision is performed by personnel associated with another company.
- The DBE hasn't been issued a subcontract, purchase order or other contractual document.
- DBE firm's owner is not aware of the status of the work, the employees and/or the performance of the business.
- DBE company owners are rarely or never seen.

Equipment

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

Workforce

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

Materials

- Materials for the DBE are ordered and/or paid for by another contractor.
- Joint (2 party) checks are sent directly to the suppliers of the DBE firm without the knowledge or consent of the DBE.
- The DBE does not deliver the agreed to joint (2-party) check to its supplier(s).
- Materials or supplies to be obtained by the DBE are delivered to, billed to or paid for by another contractor.
- The prime places requirements on the DBE regarding where to purchase project materials.

Performance

- Some of the DBE work is being done jointly with another contractor.
- The work to be performed is outside of the DBE's known experience or capability (DBE certifications/prequalification categories).
- The DBE performs work without a subcontract, purchase order or other signed contractual document.
- A DBE subcontracts more of its work than is customary or standard industry practice (50%).
- DBE participation on a project is less than the prime's commitment on MDOT form 0178 (blue sheet).
- Lack of evidence of ownership, control and/or independence of the DBE.
- The DBE works for only one prime contractor or a large portion of the DBE's contracts are with one contractor.

**Note:** Noting a red flag does not automatically mean there is a CUF violation. However, notice of red flag(s) should be documented and reported to the Office of Business Development (OBD).