

The Central County Transportation Authority DBE PROGRAM AND POLICY STATEMENT

POLICY STATEMENT

Section 26.1, 26.23

Objectives/Policy Statement

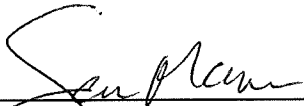
The Central County Transportation Authority (CCTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. CCTA will receive Federal financial assistance from the Department of Transportation, and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

It is the policy of CCTA to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also CCTA's 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 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 market place outside the DBE Program
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The Deputy Director of Support Services (DDSS) has been delegated as the DBE Liaison Officer by the Executive Director. In that capacity, the DDSS 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 CCTA in its financial assistance agreements.

This policy statement has been disseminated to the CCTA Board, the Kalamazoo County Transportation Authority (KCTA) Board, and all of the components of the organization. CCTA has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts as identified in the State of Michigan Unified Certification Program.



Sean McBride, Executive Director
Central County Transportation Authority

12/12/18
Date

This was approved at Central County Transportation Authority's December 10, 2018 board meeting.

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SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

CCTA is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

CCTA hereby adopts the definitions contained in the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.5 of this program.

Section 26.7 Non-discrimination Requirements

CCTA 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, CCTA 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)

CCTA will report DBE participation to DOT on a semi-annual basis, using The Uniform Report of DBE Commitments/Awards and Payments. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The CCTA purchasing agent is the City of Kalamazoo Purchasing Department as part of a three-year support service agreement. The City Of Kalamazoo Purchasing Department will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts awarded by CCTA. The bidder list will include the name, address, DBE/non-DBE status, age of the firm, and annual gross receipts. We will collect this information using the state-administered UCP (Unified Certification Program) and by including a clause in all solicitations and formally bid contracts requiring prime bidders to report the names, addresses, and other information of all firms who quote to them on subcontracts.

Section 26.13 Federal Financial Assistance Agreement

CCTA will execute the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

CCTA 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

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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 CCTA of its failure to carry out its approved program, the DOT 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: 26.13b

The CCTA will ensure that the following clause is placed on CCTA's website and referenced in each contract we sign with a contractor (and each subcontractor the prime contractor signs with a subcontractor):

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) Future bidding as non-responsible.
- (5) Termination of the contract.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the Central County Transportation Authority (CCTA) will receive a grant of \$250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. CCTA will provide the 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 the DBE Liaison Officer by title:

Deputy Director of Support Services
CCTA
530 North Rose Street
Kalamazoo, MI 49007
vlietstrag@kmetro.com
Telephone: 269-337-8222
FAX: 269-337-8211

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that CCTA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Director of CCTA

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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 direct and indirect oversight of staff sufficient to assist in the administration of the program including duties and responsibilities as follows:

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 goals attainment and identifies ways to improve progress.
6. Analyzes CCTA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Director on DBE matters and achievement.
9. Provides information and assistance to DBEs in identifying DBE training seminars.
10. Refers DBEs for certification 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. Maintains CCTA's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of CCTA's DBELO to investigate, every three years when the new goal methodology is submitted, 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. CCTA has made efforts to identify and use such institutions using the UCP approved DBE vendor list, and determined that, to date, no such institution is available.

Section 26.29 Prompt Payment Mechanisms

CCTA 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 thirty (30) days from the receipt of each payment the prime contract receives from CCTA. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (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 CCTA. This clause applies to both DBE and non-DBE subcontracts. Non-compliance with this clause will be considered default under the contract.

Failure by the prime 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) Future bidding as non-responsible.
- (5) Termination of the contract.

Section 26.31 Directory

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The Michigan Department of Transportation (MDOT) maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. The directory is printed for reference at least annually, but is available to all employees and/or individuals requesting a copy. The website for the MDOT directory is mdotjboss.state.mi.us/UCP/. The DBE vendors currently included in the UCP directory who are willing and able to work in Kalamazoo County may be found in Attachment 2 to this program document.

Section 26.33 Overconcentration

CCTA collects data, while setting the DBE goal every three years, to determine how many businesses (DBE and non-DBE) are located in our area by relevant NAICS codes. CCTA has not identified that over-concentration exists in the types of work that DBEs perform. If overconcentration were to occur, CCTA will

- (1) provide assistance to the prime contractors to find DBE's in non-traditional fields and/or
- (2) vary the use of contract goals to lessen any burden on particular types of non-DBE specialty contractors.

Section 26.35 Business Development Programs

CCTA has not established a business development program;

Section 26.37 Monitoring and Enforcement Mechanisms

CCTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

CCTA 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.

CCTA will consider similar action under CCTA's 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 procurement activities.

CCTA will 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 contract oversight to ensure that only certified DBE firms are providing work for which DBE commitment has been made in prime contracts. This will include a written certification that CCTA has reviewed contracting records and monitored the work sites.

CCTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation

Central County Transportation Authority (CCTA) has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

In an effort to foster small business participation, CCTA will make a reasonable effort to unbundle contracts to allow opportunities of a size that small businesses, including but not limited to DBE's, can reasonably perform. CCTA will require prime contractors to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

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) both included as attachments to this amendment. 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 twelve months or on sales volume averaged over a three-year period.

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CCTA will accept the following certifications for participation in the small business element of CCTA Department's DBE Program with applicable stipulations:

CCTA , in coordination with the City of Kalamazoo—Purchasing Department, will develop a small business enterprise Certification Process in compliance with 26 CFR Part 39 and will certify small business enterprise providers per those requirements until a state-wide certification process is in place.

Michigan Department of Transportation Unified Certification Process (MDOT – UCP) DBE Certification: DBE Certification by MDOT that stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by inclusion on the UCP Web Site.

Michigan Department of Transportation small business enterprise – As might be provided in the future.

SBA 8(a) Business Development Certification (as described in 13 CFR Parts 121 and 124): SBA 8(a) certification will require a supplemental submittal of three (3) years of business tax returns.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

CCTA 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. This section of the program will be updated every three years (when the goal is set).

In accordance with Section 26.45(f) CCTA will submit its overall goal to the Federal Transit Administration every three years. Before establishing the overall goal each time, CCTA will consult the current UCP directory of approved DBEs to obtain information concerning the availability of disadvantaged businesses, and current census data to obtain information concerning the availability of non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and CCTA's efforts to establish a level playing field for the participation of DBEs.

The CCTA will invite local DBE stakeholders to a public meeting prior to the DBE goal deadline submission date. CCTA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at CCTA's Administrative Office for 30 days following the date of the notice, and informing the public that CCTA will accept comments on the goals for 45 days from the date of the notice. This notice will be published at a minimum on our website (kmetro.com). CCTA will endeavor to issue this notice at least 30 calendar days prior to the commencement of each fiscal year in which the goal is reestablished. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. Further the CCTA purchasing support agent (City of Kalamazoo) is considering membership to the Michigan Minority Supplier Development Council (MMSDC).

CCTA's overall goal submission to DOT will include a summary of information and comments received during this public participation process and responses from CCTA.

CCTA will begin using the overall goal on October 1 of each year, unless CCTA has received other instructions from DOT. If CCTA establishes a goal on a project basis, CCTA will begin using the goal by the time of the first solicitation for a DOT-assisted contract goes out to bid.

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Section 26.47 Can Recipients be penalized for failing to meet overall goals?

- (a) The CCTA cannot be penalized, or treated by the Department as being in non-compliance with this rule, because our DBE participation falls short of our overall goal, unless we have failed to administer our program in good faith.
- (b) If the CCTA does not have an approved DBE program or overall goal, or if we fail to implement our program in good faith, we will be in noncompliance with this part.
- (c) If the awards and commitments shown on our Uniform Report of Awards and Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to the fiscal year, CCTA must do the following in order to be regarded by the Department as implementing our DBE in good faith:
 - (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
 - (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;
 - (3) (i) As CCTA is not a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, we are not required to submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval.
(ii) As a transit authority, not meeting the criteria of paragraph (c)(3)(i) of this section, CCTA must retain analysis and corrective actions in our records for three years and make it available to FTA on request for their review.
 - (4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race neutral or race-conscious measures.
 - (5) We may be regarded as being in noncompliance with this Part, and therefore subject to the remedies, in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement our DBE program in good faith if any of the following things occur:
 - (i) We do not submit our analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;
 - (ii) FHWA, FTA, or FAA disapproves our analysis or corrective actions; or
 - (iii) We do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of our analysis and corrective actions.
- (d) If, as a recipient, our Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of the FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that we will achieve DBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable may require us to make further good faith efforts, such as by modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 26.49 Transit Vehicle Manufacturers (TVM) Goals

CCTA 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, CCTA 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. CCTA, as an FTA recipient, is required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

All transit vehicle purchases must be made utilizing the FTA's list of eligible [Transit Vehicle Manufacturers](#).

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

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The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program. This section of the program will be updated each time the goal calculation is updated.

Section 26.51(d-g) Contract Goals

CCTA will only use contract goals (race conscious efforts) to meet any portion of the overall goal that CCTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

If during the course of any year in which we are using contract goals, it is determined we will exceed our overall goal, we will reduce or eliminate the use of contract goal to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined we will fall short of our overall goal, we will make the appropriate modifications to our race-conscious and/or race-neutral measures to allow us to meet the overall goal.

If the DBE participation CCTA has obtained by race-neutral means alone meets or exceeds our overall goals for two consecutive years, we will not be required to make a projection of the amount of your goal that can be met using such means in the next year. We will then continue using race-neutral means again until we do not meet our overall goal for a year.

In the event the our DBE participation exceeds our overall goal in two consecutive years, we will reduce our use of contract goals proportionately in the following year.

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

CCTA will express the contract goals as a percentage of total amount of a DOT-assisted contract. In any year we project meeting part of our goal through race-neutral means and the remainder through contract goals, we must maintain data separately on DBE achievements in those contracts with and without contracts goals respectively. This data will be reported to the concerned operating administration.

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. Examples of good faith efforts are found in Appendix A to Part 26.

The City Of Kalamazoo – Purchasing Department, overseen by the Chief Financial Officer, will be 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.

CCTA will ensure that all information is complete and accurate and adequately document the bidder/offeror's good faith efforts before CCTA commits to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

CCTA treats bidder/offerors' compliance with good faith efforts' 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 information:

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The names and addresses of DBE firms that will participate in the contract;
A description of the work that each DBE will perform;
The dollar amount of the participation of each DBE firm participating;
Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
If the contract goal is not met, contractor must provide written evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) days of being informed by CCTA 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: Director, CCTA, 530 North Rose Street, Kalamazoo, MI 49007, Phone 269-337-8222. 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 CCTA's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. CCTA 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.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f)-(j))

CCTA will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

CCTA requires a prime contractor not terminate a DBE subcontractor listed on the current solicitation without our prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm or with another DBE firm.

CCTA will include in each prime contract a provision stating:

- (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contracts obtains written consent from CCTA.
- (B) That, unless CCTA's consent is provided in writing, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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 CCTA to practice nondiscrimination 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 2.4 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 1), 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; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a

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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.

CCTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts will be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall provide the documentation within 7 days, which may be extended 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.

In this situation, CCTA will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, the City of Kalamazoo – Purchasing Department will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Purchasing Manager may issue a termination for default. (see contract clause in §26.13)

The requirement of this section will be applied to DBE bidder/offerors for prime contractors. The determination as to whether a DBE bidder/offeror for a prime contract has met a contract goal, CCTA will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

CCTA will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontractor of 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.

When a contract goal (race conscious effort) is established pursuant to CCTA's DBE program, the forms found at Attachment 6 will be used to collect information necessary to determine whether the bidder/offeror has satisfied the requirements of good faith efforts.

Section 26.55 Counting DBE Participation

CCTA 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

CCTA does not DBE certify firms.

For information about the certification process, firms should contact:

DBE Liaison Officer
CCTA
530 N. Rose St. Kalamazoo, MI 49007
vlietstrag@kmetro.com
Phone: 269-337-8222
FAX: 269-337-8211

The DBE certification application forms and documentation requirements are developed by the MDOT-administered UCP and are found in Attachment 7 to this program.

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SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

CCTA is a member of the Unified Certification Program (UCP) administered by the State of Michigan. The UCP will meet all of the requirements of this section.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

CCTA is not authorized to certify DBEs under the Unified Certification Process. The State of Michigan, as outlined in the UCP program, has conducted required reviews with regard to the eligibility of DBEs that were certified under former part 23, to make sure that they meet the standards of Subpart D of Part 26.

“No Change” Affidavits and Notices of Change (26.83(j))

The UCP requires all DBEs to inform MDOT, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with application for certification.

MDOT also requires all owners of all DBEs, on the anniversary date of their certification, submit a “no change” affidavit meeting the requirements of 26.83(j).

MDOT requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

MDOT has notified all currently certified DBE firms of these obligations. This notification has informed DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If the UCP program denies a firm’s application or decertifies it, it may reapply as outlined in the MDOT UCP Program.

Section 26.87 Removal of a DBE’s Eligibility

Removal of a DBE’s eligibility is managed through the MDOT-administered UCP Program. In the event MDOT proposes to remove a DBE’s certification, procedures are consistent with 26.87. Attachment 8 to this program sets forth these procedures in detail.

Section 26.89 Certification Appeals

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

Department of Transportation
Office of Civil Rights
1200 New Jersey Ave, SE
Washington, D.C. 20590

The Central County Transportation Authority (CCTA) will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for CCTA’s DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

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SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

(a) *Availability of Records.*

In responding to requests for information concerning any aspect of the DBE program, The Department complies with provisions to the Federal Freedom of Information and Privacy Acts (5U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(b) *Confidentiality of Information on Complainants.*

The identity of complainants shall be kept confidential at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

(c) *Cooperation.*

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for the DBE certification, complainants, and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews. Certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the part involved.

(d) *Intimidation and retaliation.*

If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

Monitoring Payments to DBEs

CCTA 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 CCTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

CCTA 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

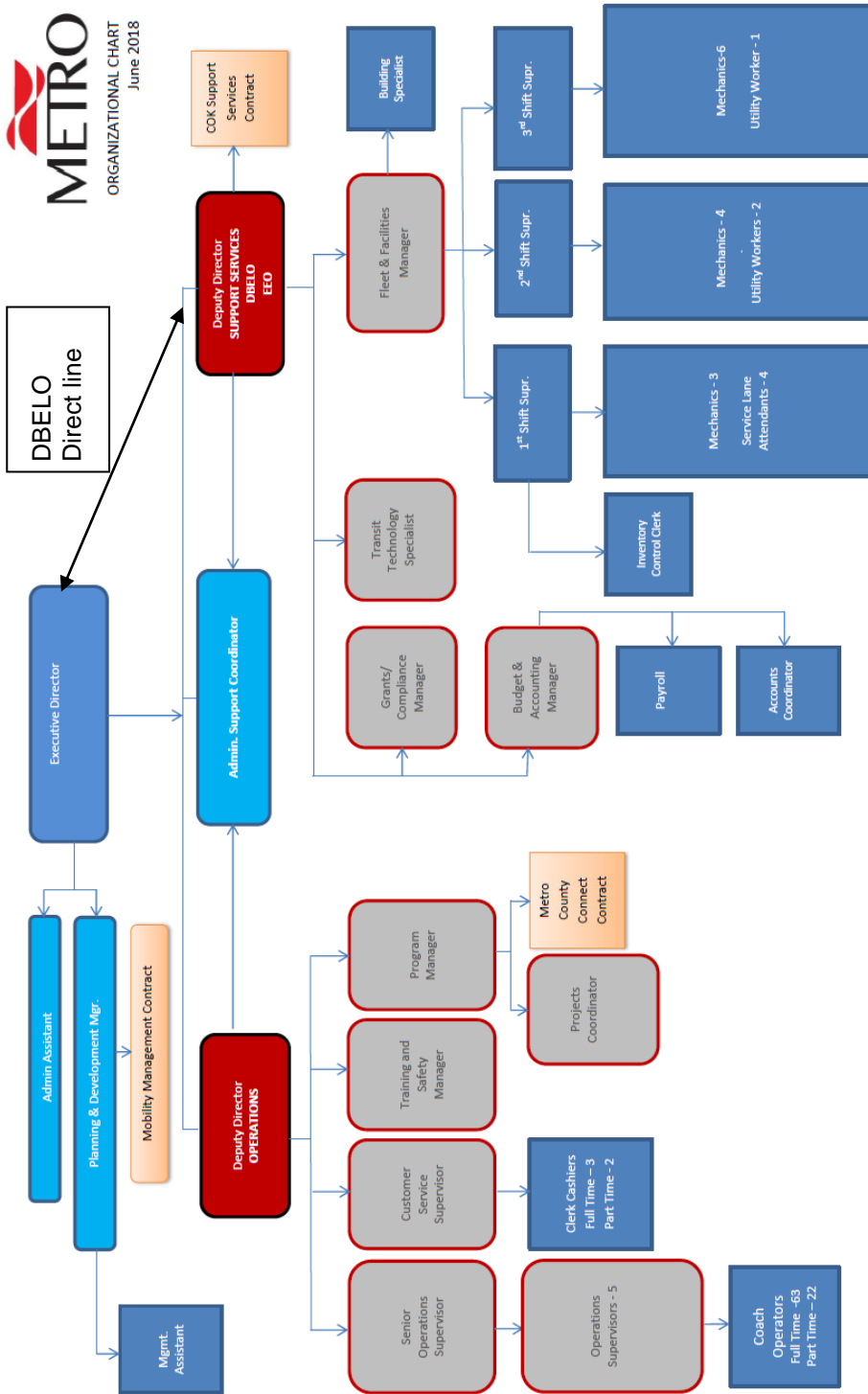
Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal Calculation
Attachment 5	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of DBE's Eligibility
Attachment 9	Regulations: 49 CRR part 26

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Attachment 10 Section 3 of the Small Business Act
Attachment 11 Part 121 Small Business Size Regulations

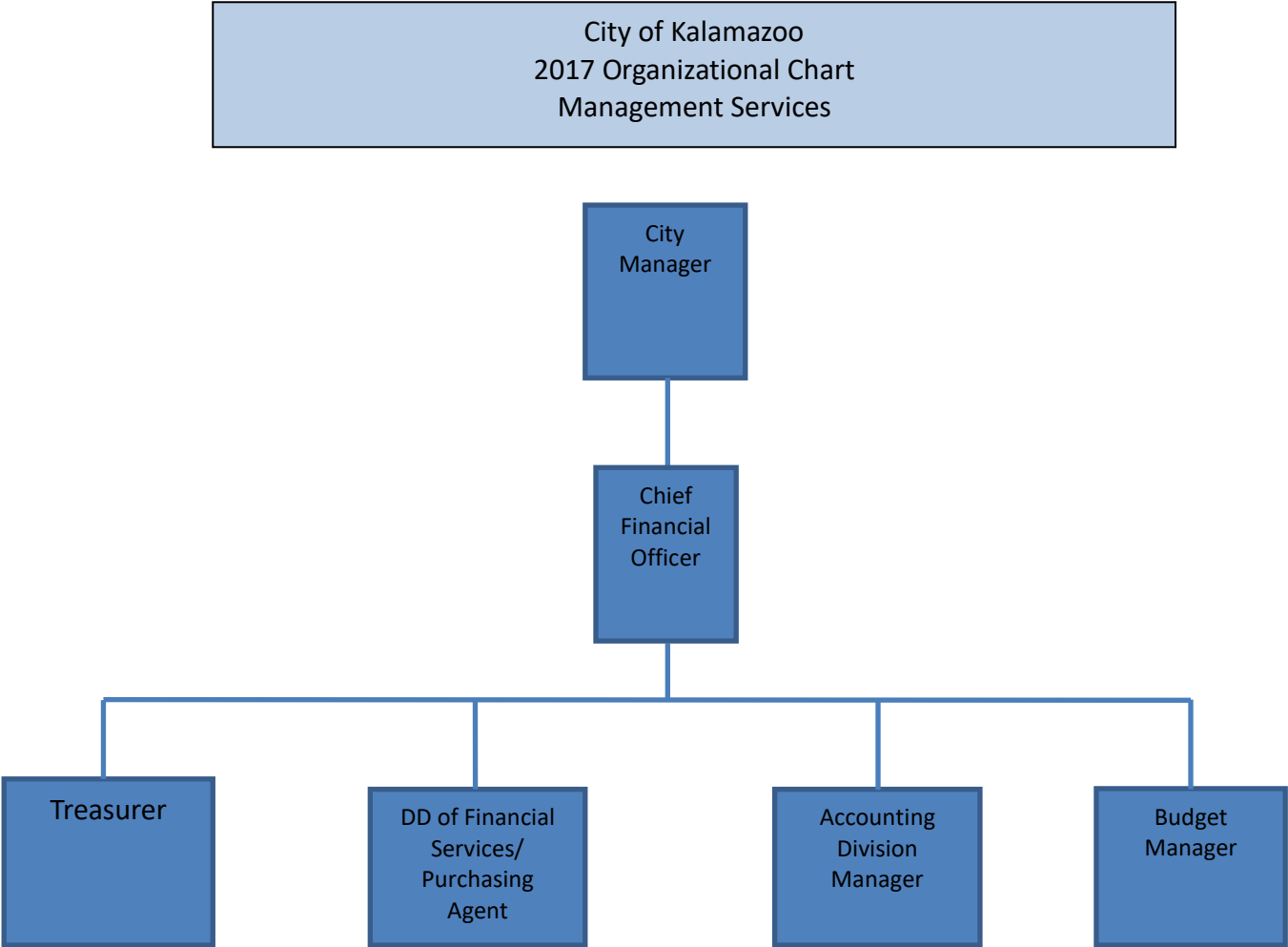
The Central County Transportation Authority DBE PROGRAM AND POLICY STATEMENT

Attachment 1 Organizational Chart



**The Central County Transportation Authority
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The Central County Transportation Authority contracts with the City of Kalamazoo for support services. This chart is to highlight the structure of Management Services.



**The Central County Transportation Authority
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Attachment 2

DBE Directory

Follow Link:

<http://mdotjboss.state.mi.us/UCP/>

**The Central County Transportation Authority
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Attachment 3

Monitoring and Enforcement Mechanisms

CCTA has remedies available to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

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:

Suspension or debarment proceedings pursuant to 49 CFR part 26

Enforcement action pursuant to 49 CFR part 31

Prosecution pursuant to 18 USC 1001.

The Central County Transportation Authority DBE PROGRAM AND POLICY STATEMENT

Attachment 4

Section 26.45: Overall Goal Calculation

Amount of Goal

1. CCTA's overall goal for FY 2017-2019 is 0.164% of the Federal Financial assistance CCTA will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated using weighting as follows:

$$\text{Base figure} = \frac{\text{Percentage of budgeted FTA funds per NAICS code}}{\text{All firms ready, willing and able per NAICS code in our market}} \times \text{Ready, willing, and able DBEs per NAICS code}$$

The data source for the multiplier was our FTA operating budget and capital plans for the 2017-2019 timeframe.

The data source or demonstrable evidence used to derive the numerator was: [MUCP website](#) narrowed down by firms located in our market area

The data source or demonstrable evidence used to derive the denominator was: the 2016 [County Business Patterns](#) information collected by the US Census Bureau. We determined our market to be the following counties: Allegan, Barry, Calhoun, Kalamazoo, Kent, St. Joseph, and Van Buren.

When the numerator was divided by the denominator, CCTA arrived at the base figure for the overall goal and that number was 0.164%

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation CCTA would expect in the absence of discrimination we have not adjusted the base figure.

The data used to determine the adjustment to the base figure was: past DBE participation of the past three years, comparison to both the City of Battle Creek's DBE goal and The Rapid's (Interurban Transit Partnership) DBE goal.

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Public Participation

CCTA published the goal information in these publications (copies of correspondence follow):

www.kmetro.com

As comments are received from CCTA's annual notices, outlined above, they will be incorporated here in this document.

CCTA's responses to these comments will be updated here as comments are received and reviewed.

**The Central County Transportation Authority
DBE PROGRAM AND POLICY STATEMENT**

Attachment 5

**Section 26.51: Breakout of Estimated
Race-Neutral & Race Conscious Participation**

CCTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. CCTA does not use the race-conscious means to increase DBE participation.

CCTA estimates that, in meeting the overall annual goal for FY2017-2019 of 0.164%, we will obtain 100% from race-neutral participation and 0% through race-conscious measures.

In order to ensure that CCTA's DBE program will be narrowly tailored to overcome the effects of discrimination, if in the future CCTA uses contract goals, CCTA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and CCTA will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily 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 DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

CCTA will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

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Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

Forms 1 and 2 will be included as part of the solicitation documents where contract goals (race-conscious efforts) have been established and information shall be required of bidders as a matter of responsiveness to the solicitation.

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 and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

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FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

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.)

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Attachment 7

Certification Application Forms

The following documents have been downloaded from the MDOT-administered UCP site. These application forms must be returned to the UCP for certification consideration.

**MAIL THE COMPLETE APPLICATION AND ALL SUPPORTING DOCUMENTS
TO ONLY ONE OF THE FOLLOWING AGENCIES:**

**Detroit Department of Transportation
1301 E. Warren
Detroit, MI 48207
Sheila Udeozor, Contract Compliance Manager
(313) 833-7695
(313) 833-5523 (fax)
udeozors@detroitmi.gov (Email)**

**Wayne County
500 Griswold, 15th Floor
Detroit, MI 48226
Marion Casey, Certification Manager
(313) 224-5021
(313) 224-6932 (fax)
mcasey@co.wayne.mi.us (Email)**

**Michigan Department of Transportation
Office of Business Development
425 W. Ottawa, P.O. Box 30050
Lansing, MI 48909
1-866-323-1264 (toll-free)
(517) 335-0945 (fax)
mdot-dbe@michigan.gov. (Email)**

Follow link:

<http://mdotjboss.state.mi.us/UCP/FormsServlet>

The Central County Transportation Authority DBE PROGRAM AND POLICY STATEMENT

Attachment 8

Procedures for Removal of DBE's Eligibility

The following documents have been downloaded from the MDOT-administered UCP site. These procedures are excerpted from the MDOT-UCP DBE Program and Procedures document.

DBE Certification Eligibility Removal and Appeal Process

If grounds for removal of DBE certification eligibility are sufficient, the DBE is mailed a Notice of Intent to Remove Eligibility with the reasons for the decision and advised of the opportunity for a hearing before the MUCP Removal of Eligibility Committee. The applicant has 30 calendar days from the date of delivery of the notice of intended removal of eligibility to appeal to the committee.

The Removal of Eligibility Committee, made up of representatives from each MUCP DBE certifying agency, processes DBE removals of eligibility in accordance with 49 CFR §26.87. The committee meets on an as-needed basis.

Members of the MUCP Removal of Eligibility Committee, other than the agency which performed the initial certification, will have one vote each. The agency requesting removal of eligibility will abstain from voting or, if necessary to break a tie, will be represented by an alternate member. In accordance with the regulations, each firm will be allowed to present their case in person or through an administrative review of documents.

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

- A. Notification by the firm that it no longer meets federal regulations for DBE certification.
- B. If the DBE's business entity has changed to the extent the business is no longer a small business concern.

Small business size is determined in two ways:

A firm and its affiliates cannot exceed the overall size limitation established for the DBE program. The current overall dollar limitation is \$22.41 million in gross receipts averaged over a three-year period. This is adjusted periodically for inflation.

A DBE cannot exceed the size standard assigned to individual NAICS codes in which the firm is certified. A table of size standards is available at www.sba.gov/size.

C. For federal-aid projects funded by FHWA, FAA and FTA funds, if the socially and economically disadvantaged individual's status has been challenged and MDOT has found the individual does not meet the definition of a "socially and economically disadvantaged individual" used in 49 CFR §§ 26.63, 26.67 and Appendix E, "Individual Determinations of Social and Economic Disadvantage," and that the firm is no longer owned and controlled at least 51 percent by a socially and economically disadvantaged individual(s).

D. If the firm's business entity has changed to the extent the business is no longer owned and controlled by socially and economically disadvantaged individual(s) as defined by the federal regulation.

E. For federal-aid projects, if the MUCP agency receives an order from the Office of the

The Central County Transportation Authority DBE PROGRAM AND POLICY STATEMENT

Secretary of Transportation, US DOT, to remove the eligibility of a DBE firm.

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

Intent to Remove Eligibility Hearing

The MUCP-certifying agency will schedule a hearing within 30 days of receipt of a request. At the conference, reasons for the intended removal of eligibility will be discussed, either in person by the DBE or through an administrative review of documents, if requested by the firm. The Removal of Eligibility Committee will receive information and evidence intended to show that certification eligibility should not be removed and will ask questions related to the intended removal of eligibility.

The panel will only review the findings of the Notice of Intent to Remove Eligibility, the certification file and the appealing firm's rebuttal of these findings. The committee will not consider any changes in the firm's organization, structure or operations that occurred after the date of the Notice of Intent to Remove Eligibility or that were not documented in the certifying agency's file as of that same date. The committee will render a written decision based on its findings within 60 calendar days after the conference.

The committee's decision will determine whether the intended removal of eligibility will be sustained or overruled. The committee's determination will have full force and effect.

If no written request for appeal is received as specified above, the intended determination to remove eligibility will become final and have full force and effect. Firms who have their eligibility removed must wait 12 months after the effective date of the final decision before reapplying for DBE certification with any US DOT-certifying agency in the state of Michigan.

Appeals to the US DOT

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

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

Appeals to the US DOT should be sent to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: 202-366-4754
TTY: 202-366-9696
Fax: 202-366-5575

A firm has the option of first exhausting the MUCP-certifying agency's administrative appeal processes before proceeding with an appeal to the US DOT.

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Attachment 9

Regulations: 49 CFR Part 26

Follow link:

<https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol1/pdf/CFR-2015-title49-vol1.pdf>

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Attachment 10

Section 3 of The Small Business Act

Follow link:

http://www.sba.gov/sites/default/files/Small%20Business%20Act_0.pdf

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Attachment 11

Part 121—Small Business Size Regulations

Follow link:

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&sid=ce3e916e1e4b3996dd3202b046326260&tpl=/ecfrbrowse/Title13/13cfr121_main_02.tpl