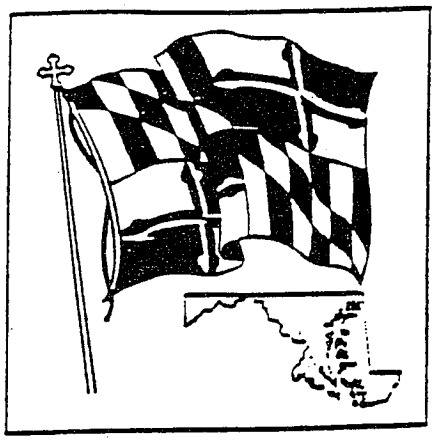
STATE OF MARYLAND



Maryland Minority Business Enterprise/

Federal Disadvantaged

Business Enterprise

Program

Maryland Department of Transportation

Office of MBE

March 2000

Maryland Department of Transportation
The Secretary's Office

Parris N. Glendening
Governor

Kathleen Kennedy Townsend
Lt. Governor

John D. Porcari
Secretary

Beverley K. Swaim-Staley
Deputy Secretary

POLICY STATEMENT OF THE SECRETARY

FOR

THE MARYLAND DEPARTMENT OF TRANSPORTATION

Since 1978, the Maryland Department of Transportation (MDOT) has been a partner with the rest of State Government in developing and operating the Minority Business Enterprise (MBE) Program. MDOT has also met the challenges of managing the Federal Disadvantaged Business Enterprise (DBE) Program in conjunction with the MBE Program. We take great pride in the knowledge that our Program continues to be used as a model for DBE/MBE efforts in many jurisdictions throughout the United States, and serves as a blueprint for other states and programs.

As the designated DBE/MBE certification agency for the entire State, MDOT renews its commitment to enhance the existing DBE/MBE Program to reflect changes in State and Federal law, as well as changes in the marketplace. MDOT, through the DBE/MBE Program, continues to encourage the growth of minority owned and operated businesses that seek to avail themselves of business opportunities in Maryland.

The Department will ensure that:

- no discrimination exists in contract awards or administration in the DBE/MBE Program
- participation of DBE/MBE firms will fully meet eligibility standards
- assistance will be given to firms to develop and compete successfully in the marketplace without the DBE/MBE Program
- the DBE/MBE Program is narrowly tailored, with appropriate flexibility
- if contract barriers are identified every effort will be made to remove such barriers so that DBEs/MBEs can compete fairly for contracts
- statutory requirements for concessions are followed.

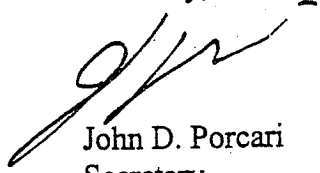
My telephone number is 410-865-1000
Toll Free Number 1-888-713-1414 TTY For the Deaf: (410) 865-1342
Post Office Box 8755, Baltimore/Washington International Airport, Maryland 21240-0755

The Department's leadership, from the Secretary's Office to the Modal Administrations, is committed to the successful implementation of the DBE/MBE Program. The Deputy Secretary, who is the Chief Operating Officer of the Department and the Department's DBE Liaison Officer, is responsible for implementing all aspects of the DBE/MBE Program. The Office of Minority Business Enterprise, within the Secretary's Office, is the uniform certification office, providing policy development and guidance, policy monitoring and overall goal development.

The Modal Administrations and the Maryland Transportation Authority with guidance from the Secretary's Office, are responsible for program implementation including the goal setting on individual contracts, contract administration, contract compliance, participation reporting, enforcement and sanctions.

Transportation serves as the lifeline of a State's economy and viable competitive minority owned and operated businesses are a vital part of a balanced economic climate. Together we can build a better Maryland.

Sincerely,



John D. Porcari
Secretary

TABLE OF CONTENTS

PROGRAM AUTHORITY 1

EXPLANATION OF TERMS 5
- ACT 5
- ADMINISTRATION 5
- ADMINISTRATION REPRESENTATIVE 5
- ADMINISTRATIVE LAW JUDGE 5
- ADMINISTRATOR 5
- AFFIRMATIVE ACTIONS 5
- AGENT/ANALYST 5
- ANNUAL RECEIPTS 5
- APPLICANT 5
- APPLICATION 6
- BROKER 6
- BUSINESS 6
- CERTIFICATION 6
- CERTIFIED BUSINESS 6
- CHAIR/MBEAC 6
- COMMERCIALLY USEFUL FUNCTION 6
- COMMISSION 6
- CONSULTANT 6
- CONTRACT COMPLIANCE OFFICER 6
- CONTRACTOR/SUBCONTRACTOR 7
- CONTROL 7
- CORPORATION 7
- DAY 7
- DECERTIFICATION 7
- DEPARTMENT 7
- DBE – DISADVANTAGED BUSINESS ENTERPRISE 7
- DBE BUSINESS DEVELOPMENT PROGRAM 7
- DBE/MBE DIRECTORY 8
- DBE/MBE PARTICIPATION PACKET 8
- DBE/MBE PROGRAM 8
- DISABLED 8
- EXPANSION OF SERVICES 8
- FEDERAL-AID CONTRACT 8
- FEE 8
- GOAL 9
- GOOD FAITH EFFORTS 9

GRADUATION 9
GROSS REVENUE 9
HOME-STATE CERTIFICATION 9
HOTLINE 10
IN-STATE FIRM 10
JOINT VENTURE 10
LESSEE 10
LIMITED LIABILITY COMPANY 10
LIMITED LIABILITY PARTNERSHIP 10
MANAGERIAL CONTROL 11
MANUFACTURER 11
MANUFACTURER REPRESENTATIVE 11
MENTOR-PROTÉGÉ PROGRAM 11
MDOT 11
MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE 11
MINORITY BUSINESS ENTERPRISE (MBE) 12
MINORITY OR MINORITY PERSON 13
NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) 13
OPERATIONAL CONTROL 14
OPERATION GUARANTEED HELP 14
OUT-OF-STATE FIRM 14
OVERCONCENTRATION 14
OWNERSHIP 14
PARTNERSHIP 14
PERSONAL NET WORTH 15
PRIMARY INDUSTRY CLASSIFICATION 15
PRINCIPAL PLACE OF BUSINESS 15
PROGRAM ABUSE 15
PROJECT ENGINEER 15
RECERTIFICATION 15
REDUCED CANDIDATES LIST 16
REGULAR DEALER 16
SATISFACTORY COMPLETION OF SUBCONTRACTORS WORK 16
SECRETARY 16
SIZE ELIGIBILITY PROVISIONS AND STANDARDS 17
SMALL BUSINESS ADMINISTRATION (SBA)8(A) CERTIFICATION 17
SMALL BUSINESS CONCERN 17
SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL 18
SOLE PROPRIETORSHIP 18
STANDARD INDUSTRIAL CLASSIFICATION (SIC) 18
STRAIGHT STATE CONTRACT 18
SUBCONTRACTOR 18
SUPPLIER 18

TECHNICAL ASSISTANT 19
THIRD TIER CONTRACTING 19
TIME 19
UNIFORM CERTIFICATION PROCESS 19
U.S. DOT 19

ELIGIBILITY 21
ELIGIBILITY STANDARDS 21
OWNERSHIP 21
CONTROL 22
SPECIAL CIRCUMSTANCES 23
PERSONAL NET WORTH 24
APPEALS 25
DETERMINATIONS OF BUSINESS SIZE 25
OTHER ELIGIBILITY CONSIDERATIONS 25
SOCIAL AND ECONOMICALLY DISADVANTAGED 26
SOCIAL DISADVANTAGE 26
ECONOMIC DISADVANTAGE 28

PROCEDURAL INFORMATION 31

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE 37
RULES OF OPERATION 37
MEMBERSHIP AND TENURE 37
RESTRICTIONS ON PARTICIPATION 38
BUSINESS MEETINGS OF THE MBEAC 38

DISADVANTAGED AND MINORITY BUSINESS ENTERPRISE PROGRAM 39
CERTIFICATION PROCESS AND PROCEDURE 39
APPLICATION PROCEDURE 39
CORPORATION 39
LIMITED LIABILITY COMPANY (LLC) 41
PARTNERSHIP 43
LIMITED LIABILITY PARTNERSHIP (LLP) 45
SOLE PROPRIETORSHIP 47

MDOT'S CERTIFICATION APPLICATION PROCESS 49
ADMINISTRATIVE CLOSURE 49
INVESTIGATIVE PROCESS 50
MBEAC MEETING 51
DECISION OF THE CHAIR/MBEAC 52
AVAILABILITY OF DECISIONS 52
NOTICE OF DECISION 53

NOTICE OF WITHDRAWAL 53
MATERIAL MISSTATEMENT OF FACT 53

REVIEW AND ANALYSIS 55
AGENT REVIEW PROCEDURE 55
MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE (MBEAC) 56
AUDIT 56
SWORN STATEMENT 56

RECERTIFICATION/CONTINUANCE OF CERTIFICATION 57

EXPANSION OF SERVICES 61

GRADUATION 63

LOSS OF CERTIFICATION 65
DECERTIFICATION 65
DECERTIFICATION HEARINGS 67
IMPACT OF LOSS OF CERTIFICATION 68
NON-RENEWAL OF CERTIFICATION 70
SANCTIONS 70

CHALLENGE PROCEDURE/INELIGIBILITY COMPLAINTS 71

RULES OF APPEAL TO U.S. DOT 73
APPEALS OF DECERTIFICATION 73

DISADVANTAGED AND MINORITY BUSINESS OUTREACH PROCEDURES 75
CONTRACT ADVERTISEMENT 75
DBE/MBE NOTIFICATION 75
OPERATION GUARANTEED HELP 76
MDOT-MSDBFA BONDING AND CONTRACT FINANCING PROGRAM 77
ENTREPRENEURIAL DEVELOPMENT INSTITUTE (EDI) 77

PROCEDURES – CONTRACT APPROVAL PROCESS 79
STRAIGHT STATE CONSTRUCTION CONTRACTS 83
STRAIGHT STATE SUPPLY AND SERVICE CONTRACTS 89
FEDERAL-AID CONTRACTS 95
FEDERAL-AID CONSULTANT AGREEMENTS 101

PROCEDURES – CONTRACTOR COMPLIANCE PROCESS 105
CONTRACT MONITORING 105
REVIEW OF COMPLIANCE REQUIREMENT 105
DBE/MBE PARTICIPATION REPORTS 105
FEES 106
THIRD TIER CONTRACTING 106
REVIEW OF PROJECT ENGINEER'S FILE 107
CONTRACTOR NOTIFICATION 107
COMPLIANCE REVIEW 108
COMPLIANCE REVIEW INFORMATION ANALYSIS 108
DETERMINING COMPLIANCE 108
COMPLIANCE 109
NON-COMPLIANCE 109
COMPLIANCE CONFERENCE 110
ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT 110
SECRETARY'S REPORT OF NON-COMPLIANCE 111
RECORDS AND REPORTS 111
COMPETENCY 111
CONTRACT COMPLIANCE – TRUCKING 113
OWNER/OPERATOR 114
REGULAR DEALER 114
LEASE/RENTAL OF VEHICLES 115
STATE HIGHWAY ADMINISTRATION REPORTING 115

COMPLAINTS 117
TYPES OF COMPLAINTS 117
THIRD PARTY CHALLENGES 117
ALL OTHER TYPE COMPLAINTS 117
COMPLAINT PROCESS 117
DETERMINATIONS 118
INTIMIDATION OR RETALIATION 118

ESTABLISHMENT OF ANNUAL PROGRAM GOAL 119

CONTRACT GOALS 121
WRITTEN SOLICITATION REQUIREMENTS 121
BIDDER'S ACTION 121
USE OF DBE/MBE BANKS 123
RECORDS AND REPORTS 123
ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT 124

OVERALL GOALS FOR FEDERALLY ASSISTED CONTRACTS 125

OVERCONCENTRATION 126

LARGE COST SUPPLY ITEM 127
STRUCTURAL STEEL (ALSO ATTACHMENT 7) 128

GOOD FAITH EFFORTS 129

RACE AND GENDER NEUTRAL ALTERNATIVES 133

SPECIAL PROVISIONS FOR UTILIZATION OF
MINORITY BUSINESS ENTERPRISES 139
STRAIGHT STATE CONTRACTS
ATTACHMENT 1 141
STRAIGHT STATE SUPPLY AND SERVICE CONTRACTS
ATTACHMENT 2 147
FEDERAL-AID CONTRACTS
ATTACHMENT 3 157
FEDERAL-AID CONSULTANT AGREEMENTS
ATTACHMENT 4 167
STATE FINANCE AND PROCUREMENT ARTICLE §14-308
CURRENT THROUGH 1998 CUMULATIVE SUPPLEMENT
ATTACHMENT 5 177
MDOT MBE PROGRAM PERSONNEL DETAIL
ATTACHMENT 6 179
LARGE COST SUPPLY ITEM: STRUCTURAL STEEL
ATTACHMENT 7 185
MENTOR-PROTÉGÉ PROGRAM GUIDELINES
ATTACHMENT 8 187
DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES
ATTACHMENT 9 189
PROMPT PAYMENT OF SUBCONTRACTORS
ATTACHMENT 10 191
PUBLIC INFORMATION PLAN
DIVISION OF STATE DOCUMENTS DEPOSITORIES FOR DOCUMENTS
ATTACHMENT 11 195
FEDERAL REPORTING REQUIREMENTS
ATTACHMENT 12 199
MINORITY BUSINESS ENTERPRISE FORMS
ATTACHMENT 13 201
DBE REQUIREMENTS FOR TRANSIT VEHICLES
ATTACHMENT 14 203

PROGRAM AUTHORITY

Statutory and regulatory mandates of the State of Maryland do not provide for the use of Minority Business Enterprise Program "set-asides" to achieve minority business enterprise program participation. Instead, the Maryland General Assembly has mandated a goal oriented program to achieve minority participation in the state's procurement activities.

The Maryland Department of Transportation (MDOT) Disadvantaged Business Enterprise Program (DBE), as mandated by Federal regulations 49 CFR Part 26 and the State's Minority Business Enterprise Program (MBE), must meet certain statutory and regulatory requirements as a condition of law and federal funding requirements. Those statutory and regulatory requirements are as follows:

A. 49 CFR, Part 26, Subparts A through F for all applicable Federal Department of Transportation Financial Assistance Programs. This regulation requires both a Program goal and a Contract goal. For the purposes of this Program, goals shall be set for specific contracts based on the known availability of certified DBE/MBEs. MDOT establishes an overall program goal each year for disadvantaged businesses.

B. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). This act replaces the Surface Transportation and Uniform Relocation Assistance Act of 1987, which provides that, except to the extent that the U.S. DOT Secretary determines otherwise, not less than 13 percent of the amounts authorized to be appropriated under this act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

C. Transportation Equity Act of 1998 (TEA-21). This act replaces the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) which provides that, except to the extent that the U.S. DOT Secretary determines otherwise, not less than 10 percent of the amounts authorized to be appropriated under this act shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals.

D. Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland for all Straight State Construction Contracts. This statute requires MDOT to structure procurement procedures to attempt to achieve participation by certified minority business enterprises in the amount of at least 14 percent of the dollar value of construction contracts in excess of $100,000 on the prime or subcontract level. This statute requires other agencies to attempt to achieve 14 percent participation by certified businesses.

E. Title 10, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland for Leases of State-Owned Property. This statute requires a goal of 10 percent MBE participation in the leasing of State-Owned property to business entities. The statute requires State agencies that lease State-owned property to structure procedures to try to achieve participation by minority business enterprises in: (1) 10 percent of the total dollar amount of the leases; and (2) 10 percent of the total number of leases.

F. Title 14, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland. This statute requires the Board of Public Works under section 14-303 of the subtitle to designate one agency to certify and decertify minority business enterprises for all units of State government through a single process that meets applicable Federal requirements. MDOT has been designated by the Board of Public Works to be that agency.

G. FEDERAL REQUIREMENTS. To the extent required by Federal assistance instruments applicable to contracts let by the State under a Federal assistance program, only those DBE/MBEs meeting federal requirements and criteria shall be used.

H. The Department of Transportation advises each subrecipient (local agencies receiving federal funds from the State), that they are required to include the following provision in all agreements with contractors on projects utilizing Federal funds:

Disadvantaged Business Enterprises:

1. Policy. It is the policy of the United States Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Agreement. Consequently, the DBE/MBE requirements of 49 CFR, Part 26, apply to this Agreement.

2. DBE/MBE Obligation. The Contractor agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal

> funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR, Part 26, to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts assisted by the United States Department of Transportation.

The MDOT DBE/MBE Program also contains procedures and Special Bid Provisions which are to be included in all bid documents and appropriate contracts to assure conformance with applicable requirements. Interested parties may view these documents and Special Bid Provisions upon request by contacting the Maryland Department of Transportation, Office of Minority Business Enterprise, during normal business hours.

Each financial assistance agreement between Maryland Department of Transportation (MDOT) and a U.S. DOT operating administration must include the following assurance:

> The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any 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.*).

Each contract signed between MDOT and a contractor (and each subcontract that a prime contractor signs with a subcontractor) must include the following assurance:

> "The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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.

EXPLANATION OF TERMS

The following explanation of terms have been provided to insure proper interpretation of key words and terms associated with the MDOT DBE/MBE Program.

ACT -- The Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), Intermodal Surface Transportation Efficiency Act of 1991, and Transportation Equity Act of 1998 (TEA-21).

ADMINISTRATION -- Any one of the Administrations within the Maryland Department of Transportation (Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary).

ADMINISTRATION REPRESENTATIVE -- A DBE/MBE Officer or employee of an Administration who enforces the laws and regulations pertaining to disadvantaged and minority business enterprise and contract compliance.

ADMINISTRATIVE LAW JUDGE -- An official of the State Office of Administrative Hearings who has been delegated the authority to preside over contested decertification hearings.

ADMINISTRATOR -- The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for his/her individual administration.

AFFIRMATIVE ACTIONS -- Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged and minority business enterprises fully in contracts and programs funded by the MDOT.

AGENT/ANALYST -- A staff member of the Office of Minority Business Enterprise who conducts investigations in response to both initial requests for DBE/MBE certification and DBE/MBE recertification.

ANNUAL RECEIPTS (ALSO GROSS RECEIPTS) -- For the purpose of determining annual receipts of a business concern, the Maryland Department of Transportation is incorporating into this manual by reference 13 CFR, Part 121 Section 121.402 Annual Receipts.

APPLICANT -- A business which has applied to the MDOT for certification as a bona fide DBE/MBE.

APPLICATION -- The Disclosure Affidavit (Form D-EEO-029 A, B, C & D or Form D-EEO-001 A, B, C, D, as appropriate) which is completed by an applicant for MDOT certification or for recertification.

BROKER -- An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

BUSINESS -- A for-profit legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, limited liability company, corporation) to engage in lawful commercial transactions.

CERTIFICATION -- The process by which a business is determined to be a bona fide DBE/MBE.

CERTIFIED BUSINESS -- A business which by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not equate to a pre-qualification status.

CHAIR/MBEAC -- The Director of the Office of MBE, the Deputy Director of the Office of MBE, or other person designated to preside over meetings of the Minority Business Enterprise Advisory Committee.

COMMERCIALLY USEFUL FUNCTION -- Work performed by a DBE/MBE in a particular transaction can be counted towards goals only if the Administration determines that it involves a commercially useful function. A certified business is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. That is, in light of industry practices and other relevant considerations, the DBE/MBE must have a necessary and useful role in the transaction of a kind for which there is a market outside the context of the DBE/MBE Program. The firm's role cannot be a superfluous step added in an attempt to obtain credit goals.

COMMISSION -- Represents monies charged for commercially useful and bona fide services. (Fee)

CONSULTANT -- See Contractor/Subcontractor

CONTRACT COMPLIANCE OFFICER -- The Department employees who are responsible for monitoring MDOT contracts for compliance with Federal DBE and State regulations regarding nondiscrimination in MDOT's DBE/MBE Program.

CONTRACTOR/SUBCONTRACTOR -- One who participates through a prime contract, second tier subcontract,[1] or lease agreement, in any matter covered by this Program.

CONTROL -- The power of the business owner(s) to direct the management and operation of a business enterprise. (See Operational Control and Managerial Control).

CORPORATION -- An artificial person or legal entity created by or under the authority of the laws of any state of the United States, the District of Columbia or a territory or commonwealth of the United States and formed for the purpose of transacting business in the widest sense of that term, including trade, commerce, manufacturing, mining, banking, insurance, transportation and other forms of commercial or industrial activity where the purpose of the organization is profit. For eligibility for certification, disadvantaged and/or minority individuals must own at least 51 percent of each class of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued by the corporation.

DAY -- Any day: workday, weekend or legal holiday.

DECERTIFICATION -- Specific administrative steps taken to remove the certification from a business which had been previously certified by the certifying agency.

DEPARTMENT -- The Maryland Department of Transportation.

DBE - DISADVANTAGED BUSINESS ENTERPRISE -- (Reference 49 CFR, Part 26, Subpart A) a small business concern: (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Where stock ownership is involved, the disadvantaged owner(s) must own at least 51 percent of each class of voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership.

DBE BUSINESS DEVELOPMENT PROGRAM -- A support program included in U.S. DOT 49 CFR Part 26 designed to move DBEs into non-traditional work areas, strengthen their ability to compete or in other ways assist the growth of DBEs by receiving assistance from MDOT. (See the DBE Business Development Guidelines in the Attachments to this Manual.)

---

[1]See third tier contract

DBE/MBE DIRECTORY -- A compilation of businesses certified by MDOT as disadvantaged, minority, or socially and economically disadvantaged businesses. The directory shall be published annually with quarterly supplements. It shall also be provided in automated format and on the Internet to be updated as changes are made.

DBE/MBE PARTICIPATION PACKET -- The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The DBE/MBE Participation Packet will consist of the MDOT Schedule for Participation of Minority Business Enterprise (Form D-EEO-003), the MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004), the MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) and the Minority Contractor Unavailability Certificate (Form D-EEO-005).

DBE/MBE PROGRAM -- A program developed by MDOT to implement the requirements of Title 14, Subtitle 3 of the State Finance and Procurement Article, Annotated Code of Maryland; Title 10, Subtitle 3 of the State Finance and Procurement Article of the Annotated Code of Maryland for Leases of State-Owned Property; and 49 CFR, Part 26, Subparts A and C for all Federal Department of Transportation Financial Assistance Programs.

DISABLED -- A condition describing a person who has a physical or mental impairment that substantially limits one or more major life activity. Major life activity may include caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing or learning. The disability is of a nature that it permanently limits a person (or his/her firm) from obtaining contracts. A person with a disability must be able to demonstrate that: (1) he/she has a history of the disability; (2) he/she is generally regarded as having such disability; and (3) the disability has substantially limited his/her ability to engage in competitive business.

EXPANSION OF SERVICES -- Additional areas of work (standard industrial classification codes, (SIC Codes), North American Industrial Classification Codes, (NAICS Codes) to a certified firm's areas of work.

FEDERAL-AID CONTRACT -- Any contract awarded to any contractor by MDOT funded in whole or in part with U.S. DOT financial assistance. This also includes consultant agreements, modification of contracts, and leases.

FEE -- A fee is money charged for providing a commercially useful and bona fide service. (Commission)

GOAL -- An Overall Annual Program Goal is established each year as an aspirational goal. Contract goals are established for each specific contract based on specific factors affecting such goals. An Overall Goal under 49 CFR Part 26 is established each year for each of the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration. These are discussed in greater detail within this Manual.

The MDOT DBE/MBE program goal is set annually. A contract goal may be higher or lower than a program goal. When an Administration establishes contract goals, the following will be used as goal determining factors:

A. Items of work which feasibly and reasonably can be contracted;
B. Availability of certified businesses within a reasonable geographical area in which the contract is to be performed; and
C. Contracts which hold the greatest business potential for the minority business enterprise community.

The Administration responsible for the contract must consider factors such as these prior to advertising the goal(s) in bid advertisements.

The Prime contractor may compute 60 percent of the purchase of supplies from regular dealers who are DBEs/MBEs toward the contract goal. Supplies may not exceed 60 percent of the entire contract goal.

GOOD FAITH EFFORTS -- Efforts to achieve a DBE/MBE goal which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. (See GOOD FAITH EFFORTS, in Manual)

GRADUATION -- State Program - The process by which a certified firm is deemed to be no longer eligible to participate in the State MBE Program due to its 3 year average of gross annual revenues or annual employment total.

GROSS REVENUE -- Same as Annual Receipts/Gross Receipts

HOME-STATE CERTIFICATION -- A DBE/MBE certification held by an out-of-state applicant, which certification has been granted by a governmental agency located within the state in which the applicant has its principal place of business. Home-State Certification is a prerequisite for MDOT certification for any firm with its principal place of business located outside of Maryland.

HOTLINE -- A 24 hour toll free telephone number direct to the Office of MBE, Maryland Department of Transportation.

IN-STATE FIRM -- A firm that has its principal place of business in the State of Maryland.

JOINT VENTURE -- An association of a DBE/MBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

LESSEE -- A business or a person who leases, or is negotiating to lease, property from the MDOT or the U.S. DOT on a MDOT or a U.S. DOT facility for the purpose of operating a transportation-related activity or for the provision of goods or services to a facility or to the public on a facility.

LIMITED LIABILITY COMPANY (LLC) -- A permitted form of unincorporated business organization which is organized and existing under Title 4A, Corporations and Associations Article, Annotated Code of Maryland, or under the laws of any other State or the District of Columbia.

LIMITED LIABILITY PARTNERSHIP -- A partnership which has registered as an LLP with the SDAT pursuant to Title 9 of the Corporations and Associations Article, Md. Code Annotated.

MANAGERIAL CONTROL -- Control in this instance means that a disadvantaged/minority owner(s) has the demonstrated ability to make independent and unilateral business decisions needed to guide the future and destiny of a business.

Managerial control may be demonstrated in many ways. For a disadvantaged/minority owner to demonstrate control, the following examples are put forth, but are not intended to be all-inclusive:

A. Articles of Incorporation, Corporate By-laws, Partnership Agreements and other agreements shall be free of restrictive language which would dilute the disadvantaged/minority owner's control, thereby preventing the disadvantaged/minority owner from making those decisions which affect the destiny of a business;

B. The disadvantaged/minority owner shall be able to show clearly through production of documents the areas of the disadvantaged/minority business owner's control, such as, but not limited to:

1. Authority to sign payroll checks and letters of credit;

2. Authority to negotiate and sign for insurance and/or bonds;

3. Authority to negotiate for banking services, such as establishing lines of credit;

4. Authority to negotiate and sign for contracts.

C. Agreements for support services that do not lessen the disadvantaged/minority owner's control of the company are permitted as long as the disadvantaged/minority business owner's authority to manage the company is not restricted or impaired.

MANUFACTURER -- A firm that produces a product from raw materials or substantially alters a previously manufactured product by operating or maintaining a factory or establishment that produces or alters on the premises.

MANUFACTURER REPRESENTATIVE -- A business that transfers title of a product from a manufacturer to an ultimate purchaser (e.g., a sales representative who invoices a product from the producing company to the contractors).

MENTOR-PROTEGE PROGRAM -- A support program included in 49 CFR Part 26 designed to move DBEs into non-traditional work areas and strengthen their ability to compete outside of the DBE Program by receiving assistance from other firms. This is not required as a part of the DBE Program. (See the Mentor-Protege Guidelines in the Attachments to this Manual.)

MDOT -- Maryland Department of Transportation

MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE -- The individual designated by the Secretary of the Maryland Department of Transportation as responsible for management of the Office of Minority Business Enterprise, this includes the certification process and the policy development of the Socially and Economically Disadvantaged and Minority Business Program.

MINORITY BUSINESS ENTERPRISE -- (MBE)

A. For Straight State Contracts:

Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent owned and controlled by one or more minority persons, or a non-profit entity organized to promote the interests of the physically or mentally disabled.

B. For Federal-Aid Contracts Under 49 CFR, Part 26, Subpart A through F:

A small business concern as defined pursuant to Section 3 of the Small Business Act (15 USC 637)(a) and implementing regulation (49 CFR, Part 26), which is owned and controlled by one or more economically and socially disadvantaged persons. For the purposes of the Program, owned and controlled means a business:

1. Which is at least 51 percent owned by one or more minority or socially and economically disadvantaged persons. Where stock ownership is involved, the disadvantaged owner(s) must own at least 51 percent of each class of the voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and

2. Whose management and daily business operations are controlled by one or more socially and economically disadvantaged or minority persons.

MINORITY OR MINORITY PERSON

A. For Straight State Contracts:

A member of one of the following socially and economically disadvantaged minority groups:

1. African American - An individual having origins in any of the Black racial groups of Africa;

2. American Indian/Native American - An individual having origins in any of the original peoples of North America and who is a documented member of a North American tribe, band, or otherwise organized group of native people who are indigenous to the continental United States or who otherwise have a special relationship with the United States or a state through treaty, agreement, or some other form of recognition. This includes an individual who claims to be an American Indian/Native American and who is regarded as such by the American Indian/Native American community of which he/she claims to be a part, but does not inclue an individual of Eskimo or Aleutian origin;

3. Asian - An individual having origins in the far East, Southeast Asia, or the Indian Subcontinent and who is regarded as such by the community of which the person claims to be a part;

4. Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin, regardless of race, and who is regarded as such by the community of which the person claims to be a part;

5. Women - This category shall include all women, regardless of race or ethnicity, although a woman who is also a member of an ethnic or racial minority group may elect that category in lieu of the gender category; or

6. Physically or Mentally Disabled - see Explanation of Term "Disabled".

B. For Federal-Aid Contracts Under 49 CFR, Part 26, see Explanation of Terms "Socially and Economically Disadvantaged Individual".

NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) -- A code established by the federal government to categorize all economic activities in the U.S. by product or service. All certified firms are certified in particular areas of work categorized by Standard Industrial Classification, a system replaced in 1999 by the NAICS.

OPERATIONAL CONTROL -- The disadvantaged/minority owner(s) must possess knowledge necessary to evaluate technical aspects of the business entity. The primary consideration in determining operational control and the extent to which the disadvantaged/minority owner(s) actually operates a business will rest upon the specialties of the industry of which the business is a part. The disadvantaged/minority owner should have a working knowledge of the technical requirements needed to operate in his/her industry. Specifically, in the construction industry and especially among small (one to five person firms) contractors, it is reasonable to expect the disadvantaged/minority owner(s) to be knowledgeable of all aspects of the business. Accordingly, in order to clarify the level of operational involvement which a disadvantaged/minority owner must have in a business for it to be considered eligible, the following examples are put forth, but are not intended to be all inclusive:

A. The disadvantaged/minority owner should have experience in the industry for which certification is being sought;

B. The disadvantaged/minority owner should demonstrate that basic decisions pertaining to the daily operations of the business are independently made. This does not necessarily preclude the disadvantaged/minority owner(s) from seeking paid or unpaid advice and assistance. It does mean that the disadvantaged/minority owner currently must possess the knowledge to weigh all advice given and to make an independent determination.

OPERATION GUARANTEED HELP -- MDOT special assistance for the DBE/MBEs certified by MDOT who need business assistance. The certified firm's owner can call the MBE Hotline at 1-800-544-6056 and a business consultant will respond within 24 hours, to understand the issues/questions and make arrangements to meet with the owner, at no cost to the DBE/MBE.

Assistance includes, but is not limited to, the following:

A. Office procedures
B. Maintaining records
C. Bidding techniques
D. Estimating techniques
E. Work programming
F. Any technical problems
G. Practical ways of getting a job done
H. Bonding
I. Insurance
J. Other questions or concerns.

OUT-OF-STATE FIRM -- A firm whose principal place of business is in a state or location other than Maryland.

OVERCONCENTRATION -- A market condition described in 49 CFR Part 26 in which the number of DBEs and their business activities in an area of work causes an undue economic burden to non-DBE firms who participate in this area of work.

OWNERSHIP -- See Section on Eligibility.

PARTNERSHIP -- An unincorporated association of two or more persons to carry on as co-owners of a business for profit. For a partnership to be deemed eligible for certification under the DBE/MBE Program, the disadvantaged or minority person's interest must be at least 51 percent of the partnership capital.

PERSONAL NET WORTH -- The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: the individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

PRIMARY INDUSTRY CLASSIFICATION -- The four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS Manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

PRINCIPAL PLACE OF BUSINESS -- The location from which the owners of a firm manage, control and operate the firm on a consistent basis and business records are maintained is the principal place of business. The principal place of business is the location generally recognized by employees, customers, suppliers, etc., as the central or headquarters operation.

PROGRAM ABUSE -- Any violation of the provisions of the DBE/MBE Program.

PROJECT ENGINEER -- The Department employee who is responsible for daily administration of MDOT projects and maintains the Inspector's Daily Reports (IDR) and Daily Construction Logs to assure compliance with the specifications of the contract. It is also the Project Engineer's responsibility to keep records of the DBE/MBE activity at the project or work site and to share this information with the Administration's representative in the performance of DBE/MBE compliance reviews.

RECERTIFICATION -- The process which is undertaken to review a certified DBE/MBE firm to assess its appropriateness to continue to be certified. It does not include a periodic resubmittal of a certification application in order to remain certified. A firm is said to be "recertified" as a result of a review of annually required updating information or documents or other information and reviews that lead to a conclusion that the firm continues to meet requirements for certification.

REDUCED CANDIDATES LIST -- A list of businesses established by the Department's consultant screening committee through screening and evaluation of candidate businesses pursuant to MDOT Consultant Selection Guidelines, from which technical and price proposals are requested.

REGULAR DEALER -- A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as cement, gravel, stone, and petroleum need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

A Regular Dealer must be engaged in selling the product in question to the public. This is important in distinguishing a Regular Dealer, which has a regular trade with a variety of customers, from a firm which performs supply-like functions on an ad hoc basis or for only one or two contractors with whom it has a special relationship.

A business that simply transfers title of a product from manufacturer to ultimate purchaser (e.g. broker or sales representative who re-invoices a product from the producing company to the recipient or contractor) or a firm that puts a product in a container for delivery would not be considered a Regular Dealer.

A supplier of bulk goods may qualify as a regular dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (e.g. a fleet of trucks), the term "operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party, (e.g., a prime contractor) or leases such a party's trucks on an ad hoc basis for a specific job.

SATISFACTORY COMPLETION OF SUBCONTRACTORS WORK -- The satisfactory completion of subcontractors work is determined by the prime contractor and reviewable by the Contract Administrator for the specific contract. The determination shall be based upon the comparison of the specific contract specifications with the actual work completed.

SECRETARY - The Secretary of The Maryland Department of Transportation, or his/her designated representative.

SIZE ELIGIBILITY PROVISIONS AND STANDARDS -- For the purpose of determining size eligibility of a business concern to participate as a DBE/MBE, the Maryland Department of Transportation is incorporating into this manual by reference 13 CFR, Part 121 Subpart A Size Eligibility provisions and standards. Size standards are established by SIC Code (or NAICS Code) based on dollar amounts or number of employees. Size determinations are based on a three year average of annual gross receipts or number of employees in the preceding 12 months including affiliates of the firm, as that term is defined in 13 CFR Part 121.

SMALL BUSINESS ADMINISTRATION (SBA)8(a) CERTIFICATION -- The SBA 8(a) Certification Program is a Federal Program which establishes firms as disadvantaged and eligible for participation in the Federal SBA Program.

SMALL BUSINESS CONCERN -- For a federally aided project, a small business as defined in to Section 3 of the Small Business Act and regulations promulgated pursuant thereto. The criteria for a determination of whether a business is a small business concern shall follow those published and promulgated by the U.S. Small Business Administration. The standards for small business size are incorporated in this manual by reference.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL PURSUANT TO 49 CFR, PART 26 -- Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

A. found by the MDOT to be socially and economically disadvantaged on a case-by-case basis;

B. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women;

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

C. Only those persons whose personal net worth does not exceed $750,000 may be found to be economically disadvantaged.

SOLE PROPRIETORSHIP -- A for-profit business owned and operated by a disadvantaged or minority person in his or her individual capacity. For a sole proprietorship to be deemed eligible for certification under the DBE/MBE Program the disadvantaged or minority person must be the sole proprietor.

STANDARD INDUSTRIAL CLASSIFICATION (SIC) -- The Code established by the federal government to categorize all economic activities in the U.S. by product or service. All certified firms are certified in particular areas of work as categorized by SIC Codes with necessary describing language. The Federally established size standards used for participation in the MBE/DBE Program have been established by individual SIC Codes. The North American Industrial Classification System (NAICS) replaces the SIC Codes beginning in 1999.

STRAIGHT STATE CONTRACT -- Any contract or modification of a contract that is fully funded by the State of Maryland, including a contract funded by a combination of State and local government funds.

SUBCONTRACTOR -- One who has contracted with a prime contractor for the performance of all or part of the work or services which the prime contractor has a contract with MDOT to perform.

SUPPLIER -- A regular dealer, who owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are placed, kept in stock, and regularly sold to the public in the usual course of business. The supplier must perform a commercially useful function consistent with normal industry practices. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A supplier of bulk goods (cement, gravel, stone, petroleum products) may qualify as a regular dealer if it either maintains an inventory or owns or operates distribution equipment. With respect to the distribution equipment (a fleet of trucks), the term "operates" is intended to cover a situation in which the supplier leases the equipment on a regular basis for its entire business. It is not intended to cover a situation in which the firm simply provides drivers for trucks owned or leased by another party, (such as a prime contractor) or leases such a party's trucks on an ad hoc basis for a specific job.

TECHNICAL ASSISTANT -- MDOT employees who are qualified in the construction field or in a field in which a disadvantaged or minority owner(s) is seeking MDOT certification, who may assist the DBE/MBE Analyst to determine the level of knowledge in those areas of skill, service or product within which the applicant(s) is seeking DBE/MBE certification, recertification or a work area within which a certified business is performing.

THIRD TIER CONTRACTING -- The process in which a prime contractor subcontracts a portion of an original contract to a subcontractor who in turn subcontracts a portion of a subcontract to a third party. This latter action is termed entering into a third tier contract. See Procedures For Contractor Compliance Process Section.

TIME -- In computing any period of time prescribed by the DBE/MBE Program or by the Chair/MBEAC, the day on which the act or event begins is not computed, but the last day of the period is computed.

UNIFORM CERTIFICATION PROCESS -- The process required in 49 CFR Part 26 for one process for the certification of disadvantaged business enterprises within a State receiving U.S. DOT funds. In Maryland, MDOT has had a Uniform Certification Process since 1978.

U.S. DOT -- U.S. Department of Transportation.

ELIGIBILITY

A. Eligibility Standards

49 Code of Federal Regulations (CFR) Part 26 in its entirety is incorporated by reference in the MDOT DBE/MBE Program. 49 CFR Part 26 Subpart D, pertaining to certification standards, applies to all businesses seeking certification through the MDOT DBE/MBE Program. Subpart D states in part: "The firm seeking certification has the burden of demonstrating to [the Certification Agency], by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantaged, business size, ownership, and control." In accordance with 49 CFR Part 26, MDOT has a uniform certification process which has been in place since 1978. The following standards are derived in part from 49 CFR Part 26:

Ownership

1. Bona fide status as a member of a minority or socially and economically disadvantaged group shall be established on the basis of the individual's claim that he or she is a member of such a group and is so regarded by that particular community. However, MDOT is not required to accept this claim if it determines the claim to be invalid. MDOT will consider association recognition and identification over a long period of time prior to application.

2. A DBE/MBE is at least 51 percent owned by one or more minorities who are socially and economically disadvantaged.

3. The contributions of capital or expertise by disadvantaged or minority owners to acquire interest in a business must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the business or its owners who are not socially and economically disadvantaged, or the mere participation in the firm's activities as an employee, rather than a manager.

4. Ownership interest held by a disadvantaged or minority person which is subject to formal or informal restrictions, such as options, security interests, agreements, etc. held by a non-minority person or business entity, must not significantly impair the disadvantaged or minority person's ownership interest.

5. The applicant must document contributions of labor within the firm regarding the person working to obtain ownership, detailed information on the specific work performed, project or client for which performed and the specific value of each of the work items performed. The work shall be in the technical areas of work of the firm, not administrative or general in nature, and shall be of outstanding quality, critical to the firm's operation, and indispensable to the firm's potential success. The individual whose expertise is relied upon must have a significant financial investment in the firm.

6. Assets acquired in property settlement or inheritance will be deemed real and substantial. Assets obtained by gift or transfer may be deemed real and substantial if the applicant can show by clear and convincing evidence that:

   a. the gift or transfer was made for reasons other than obtaining certification; and
   b. he/she controls the management, operations, and policies of the applicant firm.

7. Marital assets transferred are considered real and substantial if:

   a. the spouse irrevocably renounces and transfers all rights in the ownership interest in a manner sanctioned by state law of proper jurisdiction,
   b. the assets do not include a greater portion of joint or community property assets than state law would recognize, and
   c. documentation of this renouncement and transfer must be included in the certification application.

8. Additional issues of ownership, such as trusts, debts, gifts, and transfers, are addressed in 49 CFR Part 26.

Control

1. An eligible disadvantaged or minority business enterprise under this part shall be an independent business. The ownership and control by minorities shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the business as reflected in its ownership documents. The highest office of the firm must be held by a minority who is socially and economically disadvantaged.

   The minority owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with his/her ownership interest, as demonstrated by an examination of the substance rather than the form of arrangements.

Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a DBE/MBE. In determining whether a potential DBE/MBE is an independent business, MDOT shall consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with non-minority businesses vary from industry practices.

2. The minority owner shall possess the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions on matters of management, policy, and operations.

   The business shall not be subject to any formal or informal restrictions which limit the customary discretion of the owner(s). There shall be no restrictions through, for example, by-law provisions, partnership agreements, corporate charter provisions, contracts, or any other formal or informal devices that limit or otherwise prevent the minority owner(s) from making a business decision of the firm without the cooperation or vote of any owner who is not a minority.

3. If the owners, managers, employees, stockholders, officers, or directors of the firm who are not minorities are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities and shall not be considered a DBE/MBE. Where the actual management of the business is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business.

4. Control is a factual determination and it will be decided on a case-by-case basis, in consideration of all facts in the record.

B. Special Circumstances

In addition to the above standards, MDOT will consider to the following circumstances in determining eligibility:

1. Newly formed firms and firms whose ownership and/or control has changed recently are to be closely scrutinized to determine the reasons for the timing of the formation of or change in the businesses;

2. A previous and/or continuing employer-employee relationship between or among present owners must be carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities;

3. Any relationship between a DBE/MBE and a business which is not a DBE/MBE which has an interest in the DBE/MBE is to be carefully reviewed to determine if the interest of the non-DBE/MBE conflicts with ownership and control requirements;

4. Brokers may only be certified where they are recognized in their respective industry prior to the establishment of the DBE/MBE Program or if they work in an industry in which standard industry practice involves the services of a broker;

5. A joint venture is eligible for a specific contract if the DBE/MBE partner of a joint venture meets the standards for an eligible DBE/MBE and the DBE/MBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. Joint ventures require special analysis to determine what percentage of the dollar value of the prime contract should be credited toward a contract DBE/MBE goal.

   Because a joint venture consists of enterprises temporarily brought together, a joint venture itself can never be certified. This is true even though most or all of its component elements are certified DBE/MBE businesses.

   Ordinarily, the amount of money invested in a joint venture reflects the percentage of participation by the parties of a joint venture. The money paid to a certified DBE/MBE in a joint venture may be credited toward reaching a DBE/MBE goal and the money paid to certified DBEs/MBEs as subcontractors may also be counted.

   A joint venture agreement must reveal the scope of the DBE/MBEs managerial and financial responsibilities. A joint venture cannot serve as a conduit to meet the DBE/MBE contract goal in a situation in which the DBE/MBEs are not given the opportunity to exercise independent judgments as a viable part of a joint venture. A Maryland Department of Transportation Joint Venture Disclosure Affidavit is required for contract administration for joint ventures for MDOT.

C. Personal Net Worth

For participation on federally-assisted contracts, each disadvantaged individual owner whose ownership and control are relied upon for certification must file a Personal Net Worth Statement (and supporting documentation) with the Certification Application. Personal Net Worth, excluding the individual's investment in the applicant firm and his/her primary residence, must not equal or exceed $750,000.00.

D. Appeals

49 CFR 26, Section 26.89 addresses appeals of denials of certification as a DBE/MBE, and states in part: any business which believes it has been wrongly denied certification as a DBE/MBE under Subpart D by MDOT may file an appeal in writing, signed and dated, to U.S. DOT. The appeal shall be filed no later than 90 days after the date of denial of certification. The appeal shall contain information and arguments as to why the decision should be reversed, the name and address of other recipients who have certified the firm, those who have denied or removed certification within the year prior to the appeal, and any recipients before which an application is pending. An applicant who has been denied certification to participate on straight state contracts as a DBE/MBE may seek judicial review in accordance with Maryland law.

E. Determinations of Business Size

In determining the eligibility of applicant businesses, MDOT must determine whether or not a business is small as defined by Section 3 of the Small Business Act. If a business exceeds size standards for particular SIC Codes, it is not eligible for certification in those SIC Codes. This is true even though the business may be owned and controlled by minorities or socially and economically disadvantaged individuals and is eligible in all other respects. Even a firm certified by the SBA under the 8(a) program is not eligible under this regulation if it is not a small business.

In determining whether a business is a small business concern, MDOT shall apply the standards established by the Small Business Administration in 13 CFR, Part 121, and, in particular, §121.3-B (Definition of Small Business for Government Procurement) and §121.3-12 (Definition of Small Business for Government Subcontractors).

Annually, during recertification, the size of each business is reviewed to determine continued eligibility under these provisions. A Maryland State Graduation Program for certified firms is contained in the Recertification section.

F. Other Eligibility Considerations - (For applicants for certification for federally-aided contracts).

1. A determination of social and economic disadvantage, standing alone, does not mean that a firm is eligible. The MDOT must also determine that the firm is at least 51 percent owned by socially and economically disadvantaged individuals and that these individuals control the firm. In determining control, MDOT shall continue to follow 26.61-26.73 of Subpart D of 49 CFR, Part 26, as stated above.

2. If a firm or other party believes that MDOT's social and economic disadvantage determination is in error, the firm or party may challenge that determination in accordance with 49 CFR, Part 26, Section 26.87.

G. Socially and Economically Disadvantaged

MDOT will be guided by 49 CFR, Part 26, Appendix E and will apply the definition of Socially and Economically Disadvantaged Individual in the Explanation of Terms section of this manual for the purpose of determining social and economic disadvantage.

The below socially and economically disadvantaged criteria is not applicable to those groups under Federal certification criteria which are presumed to be socially and economically disadvantaged. For those not in the presumed groups, evidence will be evaluated with specific instances of discrimination related to the disadvantaged status of the owner. The evidence must demonstrate that the discrimination impeded or negatively affected the individual's entry and/or advancement in the business world. In all instances, the totality of circumstances will be considered in arriving at a final decision of social disadvantage status. In the separate test of economic disadvantage, the determination should reflect that the applicant firm and its owner are in a more difficult economic situation than most firms (including established firms) and owners who are not socially disadvantaged.

Social Disadvantage

The socially disadvantaged status must be established first. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

1. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

2. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

3. Negative impact on entry into or advancement in the business world because of the disadvantage. Consideration will be given to any relevant evidence in assessing specific factors. In every case, however, consideration will be given to education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

An individual may demonstrate social disadvantage through documentation pertinent to the following factors:

1. Education

   a. Access to a publicly available educational system of acceptable standards.

   b. Education in a non-discriminatory setting.

   c. Equal access to institutions of higher education and vocational training.

   d. Access to social and professional associations with students or teachers.

   e. Denial of educational honors rightfully earned.

   f. Social patterns or pressures which discouraged the individual from pursuing a professional or business education.

2. Employment

   a. Access to employment and employment training.

   b. Non-discriminating employment environment and employment training environment including unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits and other terms and conditions of employment.

   c. Access to licenses and registrations necessary to or supportive of conducting work.

   d. Access to unions and union programs and activities which are applicable and discriminatory behavior by a union.

   e. Social patterns or pressures which have channeled the individual into non-professional or non-business fields.

3. Business History

   a. Unequal access to credit or capital.

   b. Obtaining credit or capital under commercially unfavorable circumstances.

   c. Unequal treatment in opportunities for government contracts or other work.

   d. Unequal treatment by potential customers and business associates.

   e. Exclusion from business or professional organizations.

4. Living Environment

   a. Access to housing.

   b. Access to social institutions such as transportation, shopping facilities, places of worship and medical care.

Once the social disadvantage is established, economic disadvantaged status must be demonstrated and documented.

Economic Disadvantage

General. Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. This determination requires submission of the following narrative and financial information:

Submission of narrative and financial information.

1. Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

2. If married, an individual claiming economic disadvantage also must submit separate financial information on his spouse, unless the individual and the spouse are legally separated.

Economic disadvantage includes, but is not limited to:

1. Access to capital and credit opportunities.
2. Access to bonding.

MDOT may consider data from the following sources:

1. tax records;
2. financial statements;
3. business or contracting opportunities compared to non-disadvantaged firms in the same line of work (i.e. competitiveness);
4. credit availability; and
5. bonding availability.

Consideration will be given to factors relating to the personal financial condition or any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth and the fair market value of all assets, whether encumbered or not. Consideration will also be given to the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles for comparison include total assets, net sales, pre-tax profit, sales/working capital ratio and net worth.

Transfers within two years:
Except as set forth below, an individual claiming disadvantaged status will be considered to hold any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family members for that individual's education, medical expenses, or some other form of essential support. Not included will be assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries and retirements.

In determining an individual's access to capital and credit, any assets may be considered that the individual transferred within such two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities.)

Evidence submitted must clearly demonstrate that the economic disadvantage stems from the social disadvantage. People with disabilities are not a group presumed to be disadvantaged. Consideration is given to individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria. It is noted that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many people with disabilities, especially persons with severe disabilities (e.g., significant mobility, vision or hearing impairments) may be socially and economically disadvantaged. The social and economic disadvantage based on a disability which the individual has personally suffered must be shown to be chronic, longstanding and substantial. This must be done by a stringent case by case review.

Once an individual is determined to be a member of one of the specified disadvantaged classifications, after certain tests for membership are applied, that individual's status as socially and economically disadvantaged is established as a fact until the presumption is effectively rebutted. Because of the presumption, the individual applying for certification cannot be required to prove his/her disadvantaged status unless reasonable evidence to rebut the presumption is otherwise available to the certifying agency.

PROCEDURAL INFORMATION

A. Under Section 14-302 of the State Finance and Procurement Article of the Annotated Code of Maryland, MDOT shall try to achieve the result that a minimum of 14 percent of the total dollar value of procurement contracts is made directly or indirectly from certified minority business enterprises. Further, in its construction contracts, the Department shall attempt to achieve participation by certified DBE/MBEs on each construction contract in excess of $100,000 on the prime or subcontract level. A DBE program on federally-assisted programs is mandated by 49 CFR, Part 26, Subpart B. To achieve this, the following MDOT policies have been established:

1. There will be one MDOT DBE/MBE Program;

2. One MDOT DBE/MBE Certification Directory will be used throughout the Department to identify certified businesses;

3. The MDOT DBE/MBE Program Special Provisions will be incorporated into the contract specifications of each Department unit. In addition, contractor compliance procedures for contract monitoring and enforcement are established and apply to all Departmental contracts;

4. The MDOT DBE/MBE Program, including statutory goals, its definitions, procedures, etc., applies to contracts only insofar as it does not conflict with federal program requirements.

B. The MDOT DBE/MBE Advisory Committee (MBEAC), which is composed of members representing the MDOT, representatives from other departments of State Government, including Budget and Management, Public Safety and Correctional Services, General Services, the University of Maryland System, the Governor's Office of Minority Affairs and the minority business community make recommendations to the Chair/MBEAC or his/her designee, regarding the bona fides of firms seeking certification.

C. The MDOT DBE/MBE Directory is computerized and includes the appropriate Standard Industrial Code (SIC)/North American Industrial Classification System (NAICS) numbers describing the product or service for which a DBE/MBE was certified by MDOT. The Directory contains other limited information about business enterprises certified as bona fide DBE/MBEs within the MDOT's definition. Applicable portions of the current MDOT Directory may be distributed to prospective prime contractors during the bid process to aid them in identifying certified businesses. Administrations may request from the office of MBE computer lists of certified DBE/MBEs according to SIC numbers. The MDOT DBE/MBE Directory

will also be made available to other interested parties by contacting the Office of MBE, Maryland Department of Transportation, P.O. Box 8755, Baltimore-Washington International Airport, Maryland, 21240-0755. The MDOT Directory is available on diskette, a stand alone product that includes functions to print labels and search on various categories. The DBE/MBE Directory shall be published annually. Addendums/Supplements shall be published no less than quarterly and shall include the names of all business entities having been denied certification or that have lost certification or have been decertified within the last 3 months of the previous quarter. The DBE/MBE Directory shall be maintained on the Internet, updated as changes are made.

D. The MDOT contract approval process includes procedures to ensure that prime contractors comply with policies aimed at achieving the contract goal for participation by DBE/MBEs on federal aid contracts and/or straight state construction contracts over $100,000. The overall program DBE/MBE participation goal is established by the Secretary on an annual basis.

E. In achieving a goal, a maximum of 60 percent of the cost for the purchase of materials and supplies from a MDOT certified supplier who is a regular dealer may be included. DBE/MBE credited supplies may not exceed 60 percent of the entire contract goal. The supplier must assume the actual and contractual responsibility for the materials and supplies. Each Administration is responsible for determining whether or not a supplier is performing a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved or providing the materials or supplies. One hundred percent (100%) of the cost of supplies can be counted if provided by a DBE/MBE manufacturer.

F. The bidder/proposer may count towards its DBE/MBE goal the expenditures to a certified DBE/MBE manufacturer up to a maximum of 100 percent. A manufacturer is a firm that produces a product from raw materials or substantially alters a previously manufactured product by operating or maintaining a factory or establishment that produces a product on the premises.

G. A manufacturer's representative is not considered a "Regular Dealer". A contractor would not receive credit based on a percentage of the cost of the product purchased from a manufacturer's representative. Only the fee received by the manufacturer's representative can be counted toward a DBE/MBE Goal.

H. A bidder or offeror claiming to be unable to attain the required DBE/MBE contract participation must provide to the Administration awarding the contract, documentation reflecting those good faith efforts used to obtain participation by certified DBE/MBEs and must meet the requirements of COMAR 21.11.03.11 and, where applicable, 49 CFR 26.53 and Appendix A to Part 26.

I. The MDOT contract process requires:

1. Inclusion of DBE/MBE Program information in all invitations to bid;

2. Notification to the minority community of specific contract opportunities;

3. The availability to prime contractors of current MDOT DBE/MBE Directories or appropriate portions thereof.

J. Within ten (10) working days from notification but prior to contract award, the apparent low bidder will be required to submit certain documentation indicating participation by certified disadvantaged or minority business in a contract. Special Provisions with specific procedures have been established for accepting or rejecting the bidder's commitment to comply with contract goals.

Additional Documentation for State Contracts (in accordance with COMAR revised May 20, 1996):

1. A completed schedule of participation shall be furnished, naming each certified MBE who will participate in the project, that describes the:

   a. Contract items to be performed or furnished by each MBE and the proposed timetable for performance; and

   b. Agreed prices to be paid to each MBE for the work or supply.

2. An MBE subcontractor project participation statement shall be furnished, signed by both the bidder or offeror and each MBE listed in the schedule of participation, which includes:

   a. A statement of intent to enter into a contract between the prime contractor and each subcontractor if a contract is executed between the procurement agency and the prime contractor or, if the prime contractor has been awarded, copies of the subcontract agreement or agreements; and

   b. The amount and type of bonds required of MBE subcontractors, if any.

3. A list shall be furnished which includes:

   a. The contractor's compliance with COMAR 21.11.03.09B(2)(b);

   b. Certified MBE subcontractors whom the contractor solicited; and

   c. Price quotes received from both minority and non-minority subcontract bidders.

4. An affidavit shall be completed and signed by the prime contractor stating that, in the solicitation of subcontract quotations or offers, MBE subcontractors were provided not less than the same information and amount of time to respond as were non-MBE subcontractors, and that the solicitation process was conducted in such a manner as to otherwise not place MBE subcontractors at a competitive disadvantage to non-MBE subcontractors.

5. Other documentation considered appropriate by the procurement agency to ascertain bidder or offeror responsibility in connection with the contract MBE participation goal shall be furnished by the bidder or offeror.

6. If the apparent successful bidder or offeror is unable to achieve the contract goal for MBE participation, the apparent successful bidder or offeror shall consult with the procurement agency and, if still unable to achieve the contract goal, may submit instead of or in conjunction with the schedule of participation a request in writing for a waiver as provided in COMAR 21.11.03.11

7. The contractor, by submitting the bid or offer, consents to provide that documentation requested by the designated department or procurement agency pursuant to COMAR 21.11.03.13, and to provide right of entry at any reasonable time for purposes of the State's representatives verifying compliance with the DBE/MBE subcontractor requirements.

K. A contractor compliance process has been established to monitor certified subcontractor participation during contract performance. An Administration Representative will review the contractor's compliance with contractual requirements. Procedures have been established for reporting and correcting noncompliance and for administrative action when contractors fail to comply with DBE/MBE Program requirements.

L. In the event an Administration must procure construction services on an emergency basis in accordance with Section 13-108 of the State Finance and Procurement Article, Annotated Code of Maryland and COMAR 21.05.06, an Administrator may waive the requirements for DBE/MBE Program participation set forth in this manual and require instead that the contractor utilize good faith efforts to attempt to achieve the established participation goal.

M. Technical assistance may consist of referral services to existing federal, state, municipal and private agencies which provide bid/proposal preparation, bonding assistance, project financing and other services designed to eliminate barriers which have made it difficult for DBE/MBEs to enter the marketplace. It may also include referral to a paid consultant. See Operation Guaranteed Help in the Explanation of Terms.

N. A DBE/MBE may formally lease equipment from the prime contractor excluding trucks used for the purposes of hauling. The cost of leasing equipment should be negotiated but in no case may it be higher than the rates listed in the current Rental Rate Blue Book or Comparable Rate Book approved by the agency awarding a contract. In no instance may a prime contractor require that a DBE/MBE lease equipment from the prime contractor. Accepted industry practice must be adhered to by both the DBE/MBE and by the prime contractor. The leasing cost does not lessen the dollar amount the prime computes toward the DBE/MBE contract goal, with the exception of truck leasing (for hauling) from non-DBE firms, including owner operators.

O. A DBE/MBE must perform a commercially useful function. A DBE/MBE trucker or hauler must have a minimum of one fully licensed, insured and operational truck. The DBE/MBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. See Trucking Guidelines in the Procedures Contractor Compliance Process Section of this Manual.

P. No more than 5 percent of the total DBE/MBE work force may be from the prime contractor's permanent employees. The employees must be supervised by the DBE/MBEs superintendent or foreman and controlled by the DBE/MBE. When these employees are used, wages and benefit payments must be paid by the DBE/MBE. Accepted industry practice must be adhered to by both the DBE/MBE and the prime contractor. Wages and benefits paid by the DBE/MBE will not lessen the dollar amount the prime computes toward the DBE/MBE contract goal.

Q. A DBE/MBE subcontractor may purchase material from a prime contractor according to accepted industry practices, but in no instance will the prime contractor require such purchases from a DBE/MBE subcontractor. The DBE/MBE subcontractor must be permitted to seek the lowest price for materials. With regard to the purchase of materials, the DBE/MBE must perform a commercially useful function. A certified business is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

R. Double-payee checks are prohibited except for purchase of supplies and materials.

S. Discrepancies noted in payroll records and/or checks should not be returned to a contractor for correction, but rather should be appropriately acted upon to determine if the provisions of this manual are being violated. Program abuse will result in the appropriate use of administrative sanctions as determined by the Administration.

T. Program abuse, suspected program abuse, or any violation of the DBE/MBE Program by either the prime contractor or by the DBE/MBE must be documented by the appropriate Administration and reported by memorandum to the MDOT Office of MBE.

U. DBE/MBE firms will be evaluated by an MDOT Administration Equal Opportunity/DBE/MBE/Construction Personnel at the completion of their work.

MINORITY BUSINESS ENTERPRISE ADVISORY COMMITTEE
RULES OF OPERATION

To assist the Department in the certification process, the Minority Business Enterprise Advisory Committee (MBEAC) has been created to make recommendations to the Chair/MBEAC or his/her designee on behalf of the Secretary of Transportation regarding the bona fides of firms seeking certification, recertification and decertification and shall advise the Secretary of Transportation on matters related to the Minority Business Enterprise Program Certification. The MBEAC is comprised of members representing MDOT, the Departments of Budget and Management, Public Safety and Correctional Services, and General Services, the University of Maryland System, the Governor's Office of Minority Affairs and the minority business community. In establishing the MBEAC, MDOT retains all responsibility placed upon it by law and has final decision making authority.

The MBEAC will be requested to consider for certification not only Maryland businesses but also out-of-state businesses. Because the MDOT receives federal funds, it may not exclude any qualified out-of-state business from applying to MDOT for certification. MDOT requires that an out-of-state applicant possess a currently valid certification from the applicant firm's home state.

Membership and Tenure

The DBE/MBE Advisory Committee shall consist of twelve (12) members, including:

1. A Chairperson and two additional members from the Department of Transportation, one being from the State Highway Administration, are designated by the Secretary of Transportation;

2. One member from the Department of General Services, designated by Secretary, General Services;

3. One member from the University of Maryland System, designated by the Chancellor;

4. One member from the Department of Public Safety & Correctional Services, designated by the Secretary, Public Safety & Correctional Services;

5. One member from the Department of Budget & Management, designated by the Secretary, Department of Budget & Management.

6. One member from the Governor's Office of Minority Affairs (OMA), designated by the Director of OMA; and

7. Four members representing the general contracting community, designated by the Secretary of Transportation.

Each MDOT appointed committee member shall serve a one year term which may be revoked by the Secretary of Transportation prior to the completion of the term. Each committee member shall serve at the pleasure of the designating authority.

Restrictions on Participation

Any member of the Committee that has a financial interest in a firm, membership, or other interest that could affect the member's determination on a matter pending before the Committee, will not participate in deliberations regarding that firm.

Business Meetings of the MBEAC

1. Public Notice: The meetings of the MBEAC will be open to the public and publicly announced. At the discretion of the Chair/MBEAC, portions of the meetings may be closed to the public to receive advice from counsel or reports from counsel on the status of pending matters.

2. Records and Reports: Department personnel, acting as official custodians of the records and documents submitted by applicants for DBE/MBE certification, shall provide MBEAC members with a staff summary and analysis of those records and documents. The actual records and documents upon which the summary and analysis was based shall be available to the MBEAC members during the meeting that the applicant is being reviewed by the MBEAC.

3. Public Participation: Upon recognition by the Chair/MBEAC or his/her designee, members of the general public may address the MBEAC.

DISADVANTAGED AND MINORITY BUSINESS ENTERPRISE PROGRAM CERTIFICATION PROCESS AND PROCEDURE

The MDOT is committed to providing business opportunities to certified disadvantaged and minority businesses. The success of the MDOT DBE Program, as well as the State's MBE Program, rests with MDOT's ability to limit participation to bona fide DBE/MBEs. The MDOT attempts to ensure that the DBE/MBE Program benefits only those businesses certified as bona fide DBE/MBEs.

Application Procedure

The MDOT has developed a uniform "Certification Process", in effect for all of MDOT since 1978 in an attempt to ensure that all applicants for participation in the DBE/MBE Program meet the requirements of ownership and control as defined in this Manual.

The steps described below outline the certification process for all applicants seeking certification from MDOT for their respective businesses. In order to be considered for certification by MDOT, the applicant must supply all of the requested documentation and information. Failure to supply all requested documentation and information is grounds for denial of certification. Further, a material misstatement of fact shall constitute grounds for a denial of certification. Please note that a business will be reviewed and analyzed as it existed on the date the Disclosure Affidavit was signed and notarized. Changes subsequent to the notarized Affidavit date will not be considered during the Maryland certification process.

Each minority or disadvantaged individual whose ownership and control of a firm is presented as minority/disadvantaged ownership in accordance with the eligibility standards for an applicant firm, shall sign a statement of social and economic disadvantage which is a part of the full application.

A. CORPORATION

Complete and have notarized a Disclosure Affidavit for a corporation. Submit it to MDOT with the documents listed below:

1. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

2. Copies of firm's Federal Corporate tax returns, including all schedules, for the past three years, signed;

3. Resumes of the principals and key individuals of a company to include the dates of education, training, names of employers with dates, duties and responsibilities of past employment. Resumes would include owners, directors, senior project managers, operating managers, administrators, etc.;

4. Copy of license to do business in Maryland, if applicable (Professional if required);

5. Copy of Certificate of Incorporation and registration in Maryland as a Foreign Corporation, if applicable;

6. Copy of Articles of Incorporation;

7. Copy of minutes of first corporate organizational meeting and most recent corporate meeting;

8. Copy of Corporation By-Laws;

9. Copy of each stock certificate issued (not a specimen copy);

10. Copy of stock ledger;

11. Proof of stock purchase (e.g. canceled checks used to purchase stock or bank deposit slips reflecting money paid for stock or if goods/services were given for stock in lieu of cash, copies of appropriate corporate records reflecting this action). This demonstrates independent investment into the corporation;

12. Copies of third party agreements, such as rental or management service agreements;

13. Copies of titles and registrations and current insurance carriers and policy numbers for vehicles used in the business;

14. Copies of vehicle and business insurance in effect;

15. Evidence of disadvantaged or minority status;

16. Copies of DBE/MBE certifications/denials from other jurisdictions;

17. Home State Certification for non-Maryland firms;

18. Copies of three job contracts;

19. A Business Plan for a corporation in business for less than one year to include how the business is to be operated over the coming year, goals for the business, roles for key personnel and other pertinent information;

20. Social Security numbers for all principals and key employees;

21. Evidence of the manner of acquiring and financing business vehicles & equipment;

22. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance Reports with employee names and compensation);

23. A Personal Net Worth Form is required for each individual who is counted as a part of the 51 percent minority ownership and control to be considered a DBE for U.S. DOT federally financed contracts with the following MDOT Administrations: the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration;

24. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form; and

25. Any other documents considered necessary by the Director of MBE.

NOTE: A corporation may exclude itself from the U.S. DOT federally financed contracts by each minority owner, who is necessary to reach the 51 percent ownership, completing the last section of the Personal Net Worth Form.

B. LIMITED LIABILITY COMPANY (LLC)

Complete and have notarized a Disclosure Affidavit and submit it to MDOT with the documents listed below:

1. Articles of Organization (Must state the name and address of the principal office of the company, as well as the purpose for which the company is formed;

2. Operating Agreement (Detailing the manner in which the business and affairs of the company will be managed and the manner in which the members will share in the assets and earnings);

3. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

4. Copy of firm's Federal tax returns, including all schedules, for the past three years, signed;

5. Resumes of all members and key individuals of the company to include the dates of education, training, names of employers, dates, duties and responsibilities of past employment. Resumes would include owners, directors, senior project managers, operating managers, administrators, etc.;

6. Copy of license to do business in Maryland, if applicable (Professional, if required);

7. Information and documentation which demonstrate the independent investment of members to capitalize or start the business;

8. Evidence of disadvantaged or minority status;

9. Agreements, such as rental or lease or any other type of formal written agreements which have been entered into between you and another party or parties which affect the operation of your business. Include agreements with any financial institutions or other businesses/individuals and proof of payment, if applicable;

10. Copies of DBE/MBE certifications/denials from other jurisdictions;

11. Copy of Home State Certification for non-Maryland firms;

12. Federal ID Number;

13. Social Security numbers of members;

14. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance Reports with employee names and compensation);

15. Copies of three job contracts;

16. Titles, registrations and current insurance carriers and policy numbers for all company own vehicles;

17. Business Plan (if in business for less than one year);

18. A Personal Net Worth Form is required for each individual who is counted as a part of the 51 percent minority ownership and control to be considered a DBE for U.S. DOT federally financed contracts with the following MDOT Administrations: the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration;

19. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form; and

20. Any other documents considered necessary by the Director of MBE.

NOTE: A limited liability company may exclude itself from the U.S. DOT federally financed contracts by each minority owner, who is necessary to reach the 51 percent ownership, completing the last section of the Personal Net Worth Form.

C. PARTNERSHIP

Complete and have notarized a Disclosure Affidavit and submit it to MDOT with the documents listed below:

1. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

2. Copy of Federal Partnership tax returns, including all schedules, for the past three years, signed;

3. Resumes of all partners and key employees indicating education, training and employment, with dates;

4. Copy of license to do business in Maryland, if applicable (Professional, if required);

5. Partnership Agreements;

6. Buy-Out Rights Agreement;

7. Profit Sharing Agreement;

8. Proof of capital invested;

9. Third Party Agreements;

10. Evidence of disadvantaged or minority status;

11. Copies of DBE/MBE certifications/denials from other jurisdictions;

12. Copy of Home State Certification for non-Maryland firms;

13. A capability statement of the Partnership describing the type of work the business performs which lists the projects and dollar amounts of these projects performed over the last three years. A description of the role of key personnel and their functions in the business;

14. A Partnership in business for less than one year must submit a written business plan which describes how the business is to be operated over the coming year. Goals for the business shall be included;

15. Evidence of the manner of acquiring and financing business vehicles & equipment, including title documents;

16. Federal ID Number;

17. Social Security numbers for all principals and key employees;

18. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance reports with employee names and compensation);

19. Copies of three job contracts;

20. Copies of titles, registrations and current insurance carriers and policy numbers for all vehicles owned by the company;

21. A Personal Net Worth Form is required for each individual who is counted as a part of the minority ownership and control to be considered a DBE for U.S. DOT federally financed contracts with the following MDOT Administrations: the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration;

22. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form; and

23. Any other documents considered necessary by the Director of MBE.

NOTE: A partnership may exclude itself from the U.S. DOT federally financed contracts by each minority owner, who is necessary to support minority ownership and control, completing the last section of the Personal Net Worth Form.

D. LIMITED LIABILITY PARTNERSHIP (LLP)

Complete and have notarized a Disclosure Affidavit and submit it to MDOT with the documents listed below:

1. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

2. Copy of Federal Partnership tax returns, including all schedules, for the past three years, signed;

3. Resumes of all partners and key employees indicating education, training and employment, with dates;

4. Copy of license to do business in Maryland, if applicable (Professional, if required);

5. Partnership Agreements;

6. Buy-Out Rights Agreement;

7. Profit Sharing Agreement;

8. Proof of capital invested;

9. Third Party Agreements;

10. Evidence of disadvantaged or minority status;

11. Copies of DBE/MBE certifications/denials from other jurisdictions;

12. Copy of Home State Certification for non-Maryland firms;

13. A capability statement of the Partnership describing the type of work the business performs which lists the projects and dollar amounts of these projects performed over the last three years. A description of the role of key personnel and their functions in the business;

14. A Partnership in business for less than one year must submit a written business plan which describes how the business is to be operated over the coming year. Goals for the business shall be included;

15. Evidence of the manner of acquiring and financing business vehicles & equipment, including title documents;

16. Federal ID Number;

17. Social Security numbers for all principals and key employees;

18. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance reports with employee names and compensation);

19. Copies of three job contracts;

20. Copies of titles, registrations and current insurance carriers and policy numbers for all vehicles owned by the company;

21. A Personal Net Worth Form is required for each individual who is counted as a part of the minority ownership and control to be considered a DBE for U.S. DOT federally financed contracts with the following MDOT Administrations: the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration;

22. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form;

23. Any other documents considered necessary by the Director of MBE; and

24. Certificate of Limited Liability Partnership.

NOTE: A limited liability partnership may exclude itself from the U.S. DOT federally financed contracts by each minority owner, who is necessary to support minority ownership and control, completing the last section of the Personal Net Worth Form.

E. SOLE PROPRIETORSHIP

Complete and have notarized a Disclosure Affidavit and submit it to MDOT with the documents listed below:

1. Copy of current financial statement. An audited statement prepared by a CPA may be required at the discretion of MDOT. Unless requested, a financial statement does not need to be prepared by a Certified Public Accountant (CPA);

2. Copy of license to do business in Maryland, if applicable (Professional, if required);

3. Copy of Federal tax returns, including all schedules, for the past three years, signed;

4. Resumes: Sole proprietor, superintendents, foremen and/or supervisors - indicate education, training, and employment with dates;

5. Third party agreements such as rental agreements, and all others;

6. Evidence of disadvantaged or minority status;

7. Copies of DBE/MBE certifications/denials from other jurisdictions;

8. Copy of Home State Certification for non-Maryland firms;

9. A capability statement of the sole proprietorship describing the type of work the business performs which lists the projects and dollar amounts of these projects performed over the last three years. A description of the role of key personnel and their functions in the business;

10. A sole proprietorship which is less than one year old must also submit a written business plan which will describe how the business is to be operated over the coming year. Goals for the business shall be included;

11. Evidence of the manner of acquiring and financing business vehicles & equipment;

12. Titles, registrations and current insurance carriers and policy numbers for all vehicles used in the business;

13. Social Security number for all principals and key employees;

14. Copies of the last four quarterly employment reports (SUTA: State Unemployment Insurance Reports with employee names and compensation);

15. Copies of three job contracts;

16. A Personal Net Worth Form is required for each individual who is counted as a part of the minority ownership and control to be considered a DBE for U.S. DOT federally financed contracts with the following MDOT Administrations: the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration;

17. Copies of Federal Personal Income Tax Returns, including all schedules, for the past two years, for each individual required to complete a Personal Net Worth Form; and

18. Any other documents considered necessary by the Director of MBE.

NOTE: A sole proprietorship may exclude itself from the U.S. DOT federally financed contracts by each minority owner, who is necessary to support minority ownership and control, completing the last section of the Personal Net Worth Form.

MDOT'S CERTIFICATION APPLICATION PROCESS

A MDOT Disclosure Affidavit may be obtained from either of the following sources as well as business outreach events of MDOT or the State:

A. Office of MBE;

B. Modal Administration's MBE Offices.

Applications for Maryland MBE/DBE certification will be received and reviewed by the Office of MBE.

Administrative Closure

An application for certification may be administratively closed for the following reasons:

A. An applicant fails to complete the Disclosure Affidavit or to submit the required documentation by a specified date;

B. The business, by operation of law, is not eligible to do business in Maryland;

C. The business refuses to permit MDOT inquiries of bonding companies, banking institutions, credit agencies, contractors, clients, or other appropriate private agencies or persons to ascertain the history of the firm's financial responsibility and qualifications;

D. The business refuses to provide documents and/or information requested by MDOT, including, but not limited to, the following:

1. A complete Disclosure Affidavit and supporting documents;

2. An interview by a DBE/MBE Agent; or

3. An interview by the MBEAC.

E. The business, or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification as a disadvantaged or minority business enterprise or to participate in the DBE/MBE Program;

F. Minority persons own less than 51 percent of the business entity, based on clearly presented information in the application;

G. The business exceeds the size standards for each area of work or exceeds the maximum size allowed for participation in the DBE/MBE Program;

H. Other reason as appropriate (to include, but not be limited to, death of applicant, sale of business after application, etc.).

When an application for certification is closed for any of the reasons stated in A through G above, an applicant may not reapply to MDOT sooner than five (5) months from the date of the letter administratively closing the application.

Investigative Process

All applications (Disclosure Affidavit and supporting documents) for certification will be evaluated as of the date of the Disclosure Affidavit which must be signed by the applicant with the signature notarized.

A. An investigation of each firm applying for certification will be conducted. The investigation will include an on-site visit at the business location, a job site and/or warehouse, if necessary to evaluate the company in relation to the certification criteria. Results of the investigation will be prepared as a summary report to be presented to the MBEAC.

B. Prior to a regularly scheduled MBEAC meeting, the Chair/MBEAC or his/her designee will provide committee members with a copy of the investigative summary prepared for those applicants being considered for certification. Upon request, the Chair/MBEAC or his/her designee may provide MBEAC members with additional information upon which the investigative summary was prepared.

C. The MBEAC, having received a copy of this summary, examines the facts regarding the applicant meeting the certification criteria. However, no summary report should be presented to the MBEAC until all essential documents requested from the applicant have been received. After reviewing the investigative summary and all relevant documents, the committee members will advise the Chair/MBEAC or his/her designee of their recommendations regarding each applicant.

D. A copy of any investigative summary pertaining to any applicant will, upon written request and in accordance with the Maryland Public Information Act, be sent to any interested person.

E. A firm requesting certification is evaluated for particular areas of work identified by Standard Industrial Classification (SIC) Codes/North American Industrial Classification System (NAICS), supported by equipment, staffing, experience or other resources necessary to provide services or goods within the SIC/NAICS Code. Certifications are approved for specific SIC/NAICS Codes.

Maryland Business Enterprise Advisory Committee (MBEAC) Meeting

There will be regularly scheduled MBEAC meetings. All owners, directors and employees as requested by the MDOT shall attend the appropriate MBEAC meeting. A firm must be represented at the MBEAC by minority persons representing a minimum of 51 percent of the ownership of the firm.

Two occurrences of failure to appear before this committee will result in denial of certification. Applicants who are denied may not reapply for certification before five (5) months from the date of denial unless denied for a material misstatement of fact. Those applicants who receive a denial which is based on a material misstatement of fact may not reapply for certification before twelve (12) months from the date of denial.

The Chair/MBEAC or his/her designee will preside at all meetings. The following procedures shall apply at the regular MBEAC meetings:

A. Rules of evidence will not apply;

B. Only one person will be allowed to address the MBEAC at any one time;

C. Subject to recognition by the Chair/MBEAC or his/her designee, the applicant or any interested party may participate in the discussion except when the committee is in Executive Session;

D. Presentation of the minority owner's name, his or her position with the firm, and the MDOT investigative summary will normally be the first order of business;

E. Additional information may be requested at the discretion of the Chair/MBEAC or his/her designee;

F. Members of the public may be given an opportunity to comment after being recognized by the Chair or his/her designee. Based on available time, however, only comments that relate specifically to the bona fides of the applicant's business will be heard;

G. Additional information may be requested from the applicant. A date for the information to be provided and a listing of the information items will be provided to the applicant at the MBEAC;

H. MBEAC proceedings will be recorded in accordance with Title 10, Section 10-509 of State Government Article Annotated Code of Maryland.

I. Appropriate auxiliary aids and services for individuals with disabilities will be provided upon request.

Decision of the Chair/MBEAC

A. The Chair/MBEAC will hear and consider all information regarding applications for certification. As soon as is practicable and after consideration of all information, and the advice of the MBEAC, the Chair/MBEAC will issue a decision to the applicant and, upon request, to other interested parties in accordance with Maryland Public Information Act. The decision will be signed by the Chair/MBEAC. In the case of a denial, a summary of reasons will accompany the decision. A favorable decision will state the products or services (SIC/NAICS Codes) for which certification has been approved.

B. All decisions will be sent to the applicant firm by U.S. mail.

C. The decision is based upon information regarding the ownership and control of the firm at the date of the Disclosure Affidavit set forth in the application.

Availability of Decisions

All decisions are available to the public in accordance with the Public Information Act. The Chair/MBEAC or his/her designee, as appropriate, will mail upon request to interested persons any decision with respect to any applicant for certification when requested through the State's Public Information Act.

Notice of Decision

Minority owners certified or denied certification will receive notification usually within ninety (90) days subsequent to the date of MBEAC review or receipt of supplemental information subsequent to the MBEAC review. Notification of certification will include a certification number. Applicants denied certification may either appeal the decision to the U.S. Department of Transportation pursuant to the procedures under 49 CFR Part 26 Section 26.89 or reapply to MDOT not sooner than five (5) months from the date of the decision by MDOT or by U.S. DOT if an appeal is filed and the denial upheld. An applicant who has been denied certification to participate on straight state contracts as a DBE/MBE may seek judicial review in accordance with Maryland law.

Notice of Withdrawal

At any time, an applicant/minority owner for certification may request in writing to the Director or Deputy Director, Office of MBE, that the application be withdrawn. If the request for withdrawal is received after the agent's on-site visit, the applicant is required to wait not less than five (5) months from the date of an approved withdrawal before reapplying for certification.

Material Misstatement of Fact

If a material misstatement of fact is included as a reason for the denial, an applicant may reapply to MDOT no sooner than twelve (12) months from the date of the decision by MDOT or by U.S. DOT if an appeal is filed and the denial is upheld.

REVIEW AND ANALYSIS

Agent Review Procedure

After a notarized Disclosure Affidavit with supporting documentation has been received from the applicant/minority owner(s), the Office of MBE:

A. Records the receipt of a Disclosure Affidavit with inclusive supporting documentation;

B. Reviews the Disclosure Affidavit and supporting documentation to determine whether the applicant meets the certification criteria for the Maryland's DBE/MBE Program. After the application has been reviewed and analyzed, additional supporting documentation may be requested, if deemed appropriate;

C. Verifies information in an on-site interview at the offices of the applicant and reviews the operation of the applicant in one or more job site visits. An on-site interview may be provided by another state if available and sufficient with a supplemental telephone interview by MDOT;

D. Incorporate into an investigative summary all facts related to certification eligibility criteria.

In the course of an investigation of a DBE/MBE certification application, the MDOT Office of MBE Agent/Analyst shall:

A. Perform an on-site visit to the offices of the firm and to selected job sites on which the firm is working at the time of the eligibility investigation. For out-of-state firms, MDOT may use an acceptable and current on-site report from the home state. This will be supplemented with a telephone interview;

B. Discuss with the minority owner(s) the supporting documentation and gather additional data concerning the business operation and the role of the various principals in the business;

C. Interview the minority owner(s) in order to determine/verify that the minority owner(s) both managerially and operationally, on a day-to-day basis, controls the business for which certification is being sought;

D. Determine precisely the product/service for which the firm is seeking certification. (Statements such as "general contractor" are not acceptable). Assign SIC Code(s)/NAICS Code(s) to the products/services per

the OMB Standard Industrial Classification Manual/U.S. Department of Commerce North American Industrial Classification System Manual; obtain the minority owner(s) statement of the products/services to be performed as part of the DBE/MBE Program (may be on Disclosure Affidavit).

The product or service list included on the Disclosure Affidavit, or otherwise, will be verified by the MBE Agent at the on-site interview;

E. Prepare an investigative summary of the findings for submission to the Chair/MBEAC or his/her designee;

F. Other appropriate investigative steps to determine the eligibility of an applicant firm;

G. Failure of the minority owner(s), or any officers, directors or employees, to provide requested documents or information, or to meet with the DBE/MBE Agent at the job site or office, or to respond to questions at the interview or the MBEAC meeting are grounds for denial of certification;

H. A material misstatement of fact shall be grounds for denial of certification.

Minority Business Enterprise Advisory Committee

The Chair and the MBEAC will consider the investigative summary and written or oral statements of the owners or interested members of the public concerning the business, as well as any additional information.

Audit

The Chair/MBEAC or his/her designee may have an audit conducted at anytime during the period of application for certification or after certification. The audit will be conducted by MDOT in accordance with the Generally Accepted Accounting Principles (GAAP) or the Generally Accepted Auditing Standards (GAAS) of the accounting/financial records of a business seeking certification. Permission for an audit is granted by the applicants/minority owner(s) by requesting DBE/MBE certification.

Sworn Statement

A minority owner may be required, under penalty of perjury, to give sworn statements. The minority owner will permit inquiries of bonding companies, banking institutions, credit agencies, contractors and clients to obtain information on the firm's management and operations. Failure to permit such inquiries will be grounds for denial of certification.

RECERTIFICATION/CONTINUANCE OF CERTIFICATION

A MDOT certified DBE/MBE shall, upon written notice by the Director or designee, Office of MBE, provide updated information annually in order to maintain its certification. A firm does not lose its certification in any specific period of time, only for specific reasons for loss of certification including decertification, as specified elsewhere in this Manual and in 49 CFR Part 26, Section 26.83.

Whenever there is a change in ownership or control of a business, (e.g., new by-laws, owners, directors, officers, or officer powers, etc.) the DBE/MBE shall submit a new Disclosure Affidavit noting the effective changes with supporting documents. If the Personal Net Worth of an owner of a firm certified as a DBE for U.S. DOT financially assisted contracts has reached or exceeded $750,000, this must be communicated to MDOT. The failure of the DBE/MBE to do so within 30 days of the change shall constitute grounds for loss of certification.

All eligibility criteria may be reviewed by MDOT and MDOT may request all information it deems necessary to make a recertification or continuance of certification decision, including, without limitation, conducting additional office and job site interviews and asking the firm and its officers, directors, and employees, at MDOT's discretion, to appear before the MBEAC.

Recertification A

At the end of the first year of certification, if there have been no changes in the business an DBE/MBE shall submit a statement that the Disclosure Affidavit on file contains current information.

Recertification B

At the end of the second year of certification and biannually thereafter, a certified DBE/MBE will be required to submit a new Disclosure Affidavit with a current financial statement and current federal tax returns. All recertification information will be reviewed as of the date of the signed and notarized Disclosure Affidavit.

These requirements will enable the MDOT to take the following actions:

A. Delete from the DBE/MBE Certification Directory previously certified firms which are no longer certified (See Loss of Certification).

B. Reevaluate previously certified businesses.

The Director or designee, Office of MBE, will send a "Notice of Pending Recertification" to all certified businesses approximately 60 work days prior to the anniversary date of the certification. The notice will be accompanied with instructions and a new Disclosure Affidavit or recertification statement, as appropriate to update information and records. If no response is received, a second notice will be sent. If no response is received from the second notice, a third notice, in the form of a "Show Cause Notice", will be sent to the business by certified U.S. Mail. If still no response is received, DBE/MBE certification will not be continued.

The business shall submit the completed Disclosure Affidavit with the specified documentation or the completed recertification statement to the Office of MBE within thirty (30) work days of receipt of the "Notice of Renewal of Recertification."

For recertification the minority owner shall permit inquiries of bonding companies, banking institutions, credit agencies, contractors, and clients to ascertain the history of the firm's financial responsibility and qualifications. Failure to permit such inquiries may be grounds for non-renewal of certification.

The MDOT Disclosure Affidavit with specified documents will be evaluated for completeness and accuracy to determine whether or not any changes may have occurred which affect the status of the business.

The Department may review the contracting history of the business on State projects as reported by the State Agencies or MDOT Administrations to ensure that the business has maintained a record of satisfactory contract performance as an indication of capability to perform.

This evaluation may include, but not be limited to:

A. Review of the updated financial records to ascertain evidence of financial responsibility;

B. Solicitations of comments from State Agency and Modal Administration personnel and other industry sources;

C. Investigation of any reports of nonperformance or failure to complete contract work in accordance with contract specification and generally accepted industry standards; and

D. MDOT may conduct a recertification investigation at any time. The minority owner and its officer, directors and/or employees in the discretion of the Chair/MBEAC or his/her designee, may be required to appear before the MBEAC to answer questions related to the pending recertification/decertification/non-renewal. Failure to appear at the MBEAC meeting shall constitute grounds for non-renewal of certification or decertification.

The MBEAC may be requested by the Chair/MBEAC or his/her designee to review the written information and discuss the reasons for recertification/decertification at one of its regularly scheduled meetings.

If a business is recertified, the Chair/MBEAC or his/her designee will notify the minority owner in writing that certification has been continued.

EXPANSION OF SERVICES

An expansion of service process is necessary to determine that a DBE/MBE has the necessary resources of equipment, staff, expertise, etc., to carry out work in SIC/NAICS Codes for which it was not previously certified and that the minority owner(s) has the ability to exercise control over the additional work area.

Any certified DBE/MBE that is performing in work areas for which it is not presently certified, i.e., for which it does not have the assigned SIC/NAICS Code, and wishes to add one or more Codes to its certification, must request an expansion of service for additional Codes.

An Out-of-State firm must have the new area(s) of work included in its home state certification before requesting an expansion of services in Maryland.

The DBE/MBE shall submit a written request for an expansion of service to the Office of MBE detailing the specific areas of work to be included in the expansion.

The Office of MBE will conduct an on-site visit and evaluate the ability of the business to carry out the work based on the certification criteria for DBE/MBE certification. All of the certification processes and information requirements established in these regulations apply to expansion of service.

The minority owner(s) of the DBE/MBE, representing at least 51 percent ownership, must appear at a meeting of the MBEAC to discuss the expansion request.

If a request for expansion of services is approved, the applicant will receive a letter detailing the new areas of work for certification.

If a request for expansion of services is denied, an applicant will receive a written denial within 90 days of the MBEAC date or the receipt of necessary additional information.

The appeals process for the denial of certification shall apply here.

An DBE/MBE may not reapply for the same expansion of services for five (5) months following a denial of the expansion of service, based on the date of the letter of denial.

GRADUATION

1. Federally Funded Contracts

   For continued certification as a DBE, the size of a firm is assessed annually as a part of the recertification process to determine if the firm is within the criteria of a small business as specified in 13 CFR 121, by SIC Code/NAICS Code.

2. State Funded Contracts

   In accordance with COMAR 21.11.03.15B the Maryland State Graduation shall be implemented as follows:

   A. If a certified MBE has a three (3)-year gross revenue average, or if within the immediate preceding twelve (12) months has a number of employees, that meets or exceeds the revenue or employees totals specified in 13 CFR 121 by Standard Industrial Classification codes/North American Industrial Classification System Codes, the MBE remains certified but may not participate as a certified MBE;

   B. During the next three (3) years, if the MBE's annual gross revenue average or annual employment total decreases to less than the totals noted above, the MBE may resume participation as a certified MBE through the recertification process;

   C. After three (3) years of nonparticipation, if the MBE continues to meet or exceed the revenue or employee totals noted above, the MBE is considered to have graduated and will no longer be certified.

LOSS OF CERTIFICATION

Decertification

A. A certified DBE/MBE shall be decertified if the firm does not meet standards for certification as a DBE/MBE. Reasons for decertification include, but are not limited to, the following:

1. The owners, directors, officers, and/or their powers or the by-laws have changed from those as stated in the Disclosure Affidavit and represented in the application process and the DBE/MBE has failed to inform MDOT of the change(s) within thirty (30) days of the change(s).

2. The business does not meet DBE/MBE eligibility criteria established for certification as a disadvantaged or minority business enterprise.

3. The business, by operation of law, is not eligible to do business in Maryland.

4. The business has failed or refused to permit MDOT inquiries of bonding companies, banking institutions, credit agencies, contractors, clients, or other appropriate agencies or persons to ascertain the history of the firm's financial responsibility and qualifications.

5. The business has refused to provide documents and/or information requested by MDOT, including, but not limited to, the following:

   a. a complete Disclosure Affidavit and supporting documents;

   b. an interview by a DBE/MBE Analyst; or

   c. an interview by the MBEAC.

6. The business, or any of its owners, officers, and/or directors has made a material misstatement of fact related to eligibility of the business for certification and/or recertification as a disadvantaged or minority business enterprise or to participate in the DBE/MBE Program.

7. The business was mistakenly certified and/or recertified.

8. The business has failed to comply with DBE/MBE contract compliance regulations and/or procedures established by MDOT, the Board of Public Works, or any other State agency.

9. The business or any of its officers, directors, and/or employees has violated provisions of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland.

10. The business has failed to perform as an independent business concern.

11. The business has performed as a "conduit" or "broker" for pass-through contracts contrary to industry practice.

12. The business has been debarred by the Federal Government or the State of Maryland.

13. The business or any of its officers and/or directors has violated State or Federal anti-trust laws or has been found guilty of a similar violation in another State.

B. If the Director, Office of MBE, determines that grounds exist for decertification, he/she will send a Notice of Intent to Decertify to the DBE/MBE. The Notice of Intent to Decertify shall include:

1. The reason(s) for decertification;

2. The entitlement to a contested case hearing in accordance with the Maryland Administrative Procedure Act, upon a timely request; and

3. A warning that the DBE/MBE will be decertified if no request for a hearing is received within fifteen (15) days of the date of the DBE/MBEs receipt of the notice of decertification.

C. If the DBE/MBE fails to request a hearing within the 15 days, the Director of the Office of MBE or the designee shall issue an order decertifying the DBE/MBE for the reason(s) included in the Notice of Intent to Decertify.

D. If the DBE/MBE fails to request a hearing within 15 days, then the firm is immediately ineligible to participate as a DBE/MBE.

E. An operating administration of U.S. DOT may direct MDOT to initiate a proceeding to remove the firm's certification in accordance with 49 CFR Part 26 Section 26.87.

Decertification Hearings

A. A certified DBE/MBE is entitled upon timely request to a contested case hearing in accordance with the Maryland Administrative Procedure Act before it may be decertified.

B. If the DBE/MBE requests a hearing within fifteen (15) days of receipt of the notice of intent to decertify, the matter shall be referred to the Office of Administrative Hearings for a contested case hearing in accordance with the Maryland Administrative Procedure Act.

C. In the case of a hearing, and after the conclusion of a hearing, the Office of Administrative Hearings shall prepare proposed findings of fact and conclusions of law, and a proposed decision which shall be mailed to the affected firm and provided to the Department. Parties adversely affected by a decision shall be afforded an opportunity, within fifteen (15) days after receipt of a decision, to file exceptions and request the opportunity to present argument to the Secretary or the Secretary's designee.

D. The Secretary or the Secretary designee may adopt, modify, or rewrite the Administrative Law Judge's proposed findings of fact, conclusions of law, and/or decisions. The final decision, findings of fact, and conclusions of law of the Secretary or his/her designee shall be promptly delivered or mailed to all parties or their attorneys.

E. Except as stated in Section F and G below, decertified businesses may reapply for certification not sooner than twelve (12) months from the date of the final order.

Except as stated in Section F and G below, if pending a hearing for decertification, a firm voluntarily agrees to its deletion from the MBE Directory as a certified MBE, it may not reapply for certification prior to twelve (12) months from the date of its deletion.

F. A firm that has been decertified for the reasons listed in Section A.4, A.5, A.6 and/or A.8 (under Decertification) above may not reapply for certification prior to twenty four (24) months from the date of the final order.

If, pending a hearing for decertification on the grounds set forth in this subsection, a firm voluntarily agrees to its deletion from the MBE Directory as a certified MBE, it may not reapply for certification prior to twenty-four (24) months from the date of the deletion.

G. A firm that has been decertified for the reasons listed in Section A.9, A.10, A.11, A.12 or A.13, above may not reapply for certification prior to forty-eight (48) months from the date of the final order.

If, pending a hearing for decertification on the grounds set forth in this subsection, a firm voluntarily agrees to its deletion from the MBE Directory as a certified MBE, it may not reapply for certification prior to forty-eight (48) months from the date of the deletion.

H. An individual's firm may be decertified under this Section if he/she violates the provisions of Section 14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland. An individual whose firm is so decertified may not, during the period of decertification:

1. Act as a principal owner, officer and/or director of a certified DBE/MBE; or

2. Participate in any one or combination of the following State contract-related activities on behalf of a certified DBE/MBE:

   a. Submitting bids or proposals;

   b. Being awarded contracts;

   c. Performing as a prime contractor or subcontractor;

   d. Providing supplies for a contract; or

   e. Exercising a renewal option.

The period of decertification under this section shall be forty-eight (48) months from the date of the decertification.

Impact of Loss of Certification

When a firm receives a contract as a disadvantaged or minority business enterprise, being an eligible firm is a condition of performing the contract as awarded. If the firm loses its eligibility for DBE/MBE status, the firm shall be considered having defaulted on its obligations under its prime contract, in accordance with the following provisions:

A. Straight State Contracts

When a firm already has an executed contract and has been decertified, the DBE/MBE firm shall no longer be considered an approved DBE/MBE subcontractor. The Department may allow the decertified DBE/MBE to continue as an approved subcontractor for good cause in instances of hardship to the prime contractor or in the best interest of the State. Credit for DBE/MBE participation shall cease to be reported when a DBE/MBE is no longer certified as a bona fide DBE/MBE. This does not relieve the prime contractor from its contractual responsibilities to the State or of its obligations to meet the DBE/MBE participation goals under the prime contract.

In situations where a DBE/MBE has received a commitment for a contract to fulfill DBE/MBE requirements, but the contract has not yet been executed, the DBE/MBE will not be considered for DBE/MBE participation if the DBE/MBE has been decertified. The prime contractor must make good faith efforts to replace the decertified firm with an eligible DBE/MBE.

B. Contracts with Federal U.S. DOT Financing

When a prime contractor has made a commitment to use a DBE who has lost its certification but the subcontract has not been executed prior to the notice of loss of certification, the prime contractor is required to obtain an eligible, certified DBE for the contract or demonstrate to MDOT that it has made a good faith effort to do so.

When a prime contractor has executed a contract with a DBE subcontractor before the notice of loss of certification, the prime contractor may continue to use the firm on the contract and may continue to receive credit towards its DBE goal, i.e., contract goal, for the work of that subcontractor.

The work carried out by a DBE prime contractor would be counted by MDOT up to the loss of certification. The work performed after the loss of certification would not be considered DBE participation.

When a DBE subcontractor has lost its certification, MDOT may not continue to count the DBE participation which takes place after the loss of certification as DBE work when counting participation towards the overall goal of the modal administration or the Department.

If a DBE's loss of certification is the result of exceeding the size standards while performing on a contract, the DBE participation may be counted for both the contract goal and the overall goal.

Non-renewal of Certification

The certification of a currently certified DBE/MBE will not be renewed during the recertification review period or any other time period if one or more of the following situations exist:

A. The owners, directors, CEO, President and/or their powers or the by-laws have changed from those as stated in the Disclosure Affidavit and represented in the application process;

B. Recertification documents have not been submitted to MDOT, as requested;

C. Letters to a DBE/MBE are returned to MDOT as not able to be forwarded;

D. There is no telephone listing for the DBE/MBE;

E. Loss of charter or by operation of law is not entitled to do business in the State.

If no reply is received after two requests for recertification documents, a Show Cause Notice will be sent to the DBE/MBE. If no reply from the DBE/MBE to the Show Cause Notice is received, a notice that the DBE/MBE certification is not renewed will be sent. NOTE: This is not Decertification as established in items above: Decertification A.1 through A.13.

Sanctions

In the case of actions which are cause for Decertification, either prior to simultaneous to or subsequent to decertification, a DBE/MBE may be:

A. Referred to the Office of the Attorney General for investigation, review and initiation of suspension, debarment or criminal proceeding and/or;

B. Any other action as appropriate.

CHALLENGE PROCEDURE/INELIGIBILITY COMPLAINTS

MDOT is required under 49 CFR, Part 26, Subpart E, Section 26.87 to establish a challenge procedure regarding complaints on eligibility of a firm currently certified as an eligible DBE.

The MDOT's challenge procedure is as follows:

A. Any third party may challenge the eligibility of a certified DBE. The challenge shall be made in writing to the MDOT Office of MBE.

B. With its challenge, the challenging party shall include specific reasons relevant to a determination as to whether or not the challenged party is eligible to be a certified DBE. General allegations may not be accepted.

C. The MDOT shall determine whether or not there is reason to believe that the challenged party is eligible as a certified DBE through a review of records, other available information, by requesting additional information or conducting any other investigation deemed necessary.

If MDOT determines that the challenged party is eligible as a certified DBE, MDOT shall so inform the challenging party in writing with the reasons for the determination and thereby terminate the proceedings.

If MDOT determines that there is reason to believe that the challenged party is not eligible as a certified DBE, MDOT shall begin proceedings as provided below.

D. The Secretary of the Maryland Department of Transportation or designee shall notify the challenged party in writing that MDOT proposes to find the firm ineligible as a certified DBE, setting forth the reasons. The notice shall also require the challenged party to provide MDOT, within a reasonable period of time, information sufficient to permit the MDOT to evaluate the challenged party's eligibility as a certified DBE.

For firms which are certified for U.S. DOT federally financed contracts, the challenging party's identity must be maintained as confidential. If a firm is certified only for Straight State funded contracts the firm shall be informed of the complaining party's identity and grounds of the complaint.

E. The Secretary of the Maryland Department of Transportation or designee shall evaluate all available information and make a determination concerning the eligibility of the challenged party. The Secretary or designee shall notify both parties of the determination in writing, setting forth the reasons for the determination.

F. In making the determination called for above, the Secretary or designee shall use the standards set forth in Appendix E to 49 CFR, Part 26.

G. During the pendency of a challenge, the presumption that the challenged party is eligible as a certified DBE shall remain in effect.

H. A U.S. DOT concerned operating administration may direct MDOT to initiate a proceeding to remove a firm's certification. The concerned operating administration must provide a notice to MDOT and to the firm containing the reasons for the directive including any relevant information and documentation. MDOT must immediately begin the process to remove eligibility, i.e. decertify the firm.

I. A firm which has a loss of certification as a result of an ineligibility complaint shall be subject to the same requirements and rights as stated in the Loss of Certification, Decertification, section of this Manual.

RULES OF APPEAL TO U.S. DOT

Any sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which has received a final order from the Maryland Department of Transportation denying certification or an expansion of services, not renewing certification or being decertified as a DBE/MBE for the purposes of Federal-aid contracts, may appeal that decision pursuant to 49 CFR, Part 26, Section 26.89 to the U.S. Department of Transportation (U.S. DOT), Office of Civil Rights, 400 7th Street, S.W., Room 2401, Washington DC 20590. Interested parties who have reason to believe that a business has been wrongly denied or granted certification are encouraged to so advise the Secretary, U.S. DOT.

If the U.S. DOT Office of Civil Rights sustains a final order denying certification, that business may reapply to the MDOT for certification as a bona fide disadvantaged business enterprise not sooner than five (5) months after the decision of the U.S. DOT, Office of Civil Rights. A new DBE/MBE Disclosure Affidavit with supporting documentation must be submitted as if the business were requesting initial certification.

If the U.S. DOT, Office of Civil Rights, sustains a final order decertifying a DBE/MBE, the period of decertification shall begin on the date of the decision of the U.S. DOT, Office of Civil Rights.

Appeals of Decertification

A certified DBE/MBE which has received a final decertification order may seek judicial review of the decision as provided in the Maryland Administrative Procedure Act, State Government Article, Section 10-222, of the Annotated Code of Maryland.

DISADVANTAGED AND MINORITY BUSINESS OUTREACH PROCEDURES

A. **Contract Advertisement**

All invitations to bid will include the following information:

"The Maryland Department of Transportation (MDOT) hereby notifies all bidders that in regard to any contract entered into pursuant to this advertisement, certified disadvantaged businesses will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for an award."

1. On federally funded projects where there are subcontractable opportunities the following language will be used:

   "It is the goal of MDOT that disadvantaged business enterprises participate in all federal-aid contracts. Each contract will be evaluated for the placement of a goal for DBE/MBE participation on a contract-by-contract basis."

2. On straight state funded projects where there are subcontractable opportunities the following language will be used:

   a. "It is the goal of MDOT that certified minority business enterprises participate in a minimum of fourteen percent (14%) of the total dollar value of the Department's supply and service procurement."

   b. "It is the goal of MDOT that certified minority business enterprises participate in a minimum goal of fourteen percent (14%) of the total value of construction contracts in excess of $100,000."

B. **DBE/MBE Notification**

The procedure for an Administration to notify the certified business community of contract opportunities will be as follows:

1. Solicitations, including Notice of Invitation to Bid -- An appropriate number of certified businesses listed in the MDOT DBE/MBE Directory providing the work being advertised shall receive a Notice of Invitation to Bid.

2. Solicitations, including Notice of Invitation to Bid -- Certified businesses listed in the MDOT DBE/MBE Directory with experience in the work being advertised may upon request, be sent a Notice of Invitation to Bid.

3. Notices will be published in newspapers including the Afro-American Newspaper and will be sent to the following organizations:

   a. Appropriate DBE/MBE Business Technical Assistance Organizations;

   b. Appropriate DBE/MBE Contractor Associations;

   c. Appropriate DBE/MBE Trade Organizations;

   d. The Governor's Office of Minority Affairs.

4. Plans and Specifications -- Plans and specifications on all construction projects will be made available to minority contractor associations and trade organizations.

5. List of Plan-holders -- The names of prime contractors requesting bid documents will be made available on request to those certified businesses listed in the MDOT DBE/MBE Directory whose specialty is in the subcontract work to be performed.

6. MDOT DBE/MBE Directory -- Each prime contractor obtaining plans and specifications for MDOT construction projects will be furnished a list of DBE/MBEs certified to carry out those contract items identified by the Administration as subcontractable items. This list may be used in soliciting subcontract bids, materials and services from certified businesses or other components of the project.

C. **Operation Guaranteed Help**

A DBE/MBE certified by MDOT may request assistance in any area of business expertise by calling the DBE/MBE Hotline, 1-800-544-6056 in the Office of Minority Business Enterprise. The DBE/MBE will receive the initial response within 24 work hours and an appointment for appropriate support will be made at that time or shortly thereafter.

Assistance includes, but is not limited to, the following:

1. Office procedures
2. Maintaining records
3. Bidding techniques
4. Estimating techniques
5. Work programming
6. Any technical problems
7. Practical ways of getting a job done
8. Consultation on bonding
9. Consultation on insurance
10. Any other questions or concerns which are appropriate

D. **MDOT-MSBDFA Bonding and Contract Financing Program**

A MDOT special assistance program operated through the Maryland Small Business Development Financing Authority Management Group which provides contract financing and surety bonding assistance to eligible firms to begin, continue and complete work on MDOT's contracts. Firms bidding on MDOT contracts needing a bid, performance or payment bond or working capital can contact the MSBDFA Management Group, Inc. 410-333-4270 for more information and/or assistance.

E. **The Entrepreneurial Development Institute (EDI)**

A MDOT State Highway Administration federally funded assistance program centered at the University of Maryland Eastern Shore (UMES). DBEs needing training in the areas of writing business plans, management of small businesses, managing human resources, budget and payroll, technical math, planning and scheduling projects, construction estimating and bidding and computer applications can contact the Office of Equal Opportunity, Maryland State Highway Administration 410-545-0315 for more information on this program. EDI sessions are held no less than twice yearly; each lasting over a period of four weekends. A nominal fee is charged and MBEs are invited to take local hotel accommodations at very reasonable rate.

E

PROCEDURES

1. CONTRACT APPROVAL PROCESS FOR:
   - Straight State Construction Contracts
   - Straight State Supply and Service Contracts
   - Federal-Aid Contracts
   - Federal-Aid Consultant Agreements
2. CONTRACTOR COMPLIANCE PROCESS

PROCEDURES
CONTRACT APPROVAL PROCESSES
FOR STRAIGHT STATE CONSTRUCTION CONTRACTS, FEDERAL-AID CONTRACTS AND FEDERAL-AID CONSULTANT AGREEMENTS

The MDOT has adopted contract approval processes for those contracts in which DBE/MBE Participation is required. Straight state construction contracts with an estimated value of $100,000 are affected by the sub-section entitled "Procedures - Contract Approval Process for Straight State Construction Contracts." Straight state consultant agreements are affected by the sub-section entitled "Procedures - Contract Approval Process for Straight State Consultant Agreements." Straight state supply and service contracts, except consultant agreements, are affected by the sub-section entitled "Procedures - Straight State Supply and Service Contracts (Excluding Consultant Agreements)." Federal-aid contracts of all types are affected by the sub-section entitled "Procedures - Contract Approval Process for Federal-Aid Contracts and Consultants Agreements."

To avoid confusion, each procedure is outlined separately. It is recognized that this section contains several redundant processes. For the sake of clarity and understanding, redundancy is deemed secondary to the understanding of the differences and similarities of these sub-sections.

PROCEDURES
CONTRACT APPROVAL PROCESS
FOR STRAIGHT STATE CONSTRUCTION CONTRACTS

A. **Advertisement**

All invitations to bid will include the following information:

"The Maryland Department of Transportation (MDOT) hereby notifies all bidders that in regard to any contract entered into pursuant to this advertisement, certified businesses will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, or national origin in consideration for an award."

"It is the goal of MDOT that minority business enterprises participate in a minimum of fourteen percent (14%) of the total value of construction contracts in excess of $100,000."

B. **DBE/MBE Notification**

The procedure for an Administration to notify the certified business community of construction contract opportunities will be as follows:

1. Notice of Invitation to Bid - Certified businesses in the MDOT DBE/MBE Directory with experience in the work being advertised may, upon request, be sent a Notice of Invitation to Bid.

2. Notices will be published in appropriate metropolitan newspapers, including newspapers catering to the minority community. Copies of solicitation notices will also be sent to the following organizations:

   a. DBE/MBE Technical Assistance Organizations;
   b. Appropriate DBE/MBE Associations;
   c. Appropriate DBE/MBE Trade Organizations;
   d. The Governor's Office of Minority Affairs.

3. Plans and Specifications -- Plans and specifications on all construction projects will be made available to minority contractor associations and trade organizations.

4. List of Plan-holders -- The names of prime contractors requesting bid documents will be made available on request to those certified businesses listed in the MDOT DBE/MBE Directory who are certified in the Standard Industrial Classification Code for work to be performed.

5. MDOT DBE/MBE Directory -- Each prime contractor obtaining plans and specifications for MDOT construction projects will be furnished a list of DBE/MBEs certified to carry out those contract items identified by the Administration as subcontractable items. This list may be used in soliciting subcontract bids and for materials and services from certified businesses. However, this list is not necessarily all inclusive.

C. **Pre-Bid Conference**

1. At each Pre-Bid Conference an Administration Representative will review appropriate Special Provisions for Straight State Construction Contracts (Attachment 1) and explain the MDOT DBE/MBE contract goal for minority business participation in each MDOT construction contract exceeding $100,000. The Administration Representative will review with the prospective bidders the detailed steps to assure compliance with the MDOT DBE/MBE Program requirements.

2. Prime contractors will be directed to allow at least five (5) working days for a DBE/MBE subcontractor to prepare a bid proposal.

D. **Contract Award**

1. Determination of Bidder Responsibility:

   a. Prior to the contract award, the apparent low bidder will be required to submit certain documentation indicating participation by certified DBE/MBEs on the contract when a DBE/MBE participation goal exists for that contract;

   b. The apparent low bidder may use the services of the Administration DBE/MBE Resource Unit to assist in the development of its DBE/MBE Participation Program;

   c. The apparent low bidder will provide the Administration Representative with the DBE/MBE Participation Program which contains the following:

      (1) The name of an employee designated as the bidder's liaison officer for minority business;

(2) A completed MDOT Schedule for Participation of Minority Business Enterprise (Form D-EEO-003) for the DBE/MBEs the bidder intends to utilize if awarded the contract. The Schedule will show the agreed upon prices to be paid for each DBE/MBE and a detailed listing of the contract items to be performed by the certified business with the timetable for the work to be performed;

(3) The MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004) completed and signed by the bidder or offeror and each certified DBE/MBE contained in the Schedule of Participation. This statement is an agreement by the bidder or offeror with the certified business for the subcontract work and/or materials and services listed in the Schedule to become effective after the award of the contract to the apparent low bidder;

(4) If the bidder intends to attain the contract goal for DBE/MBE participation through the use of a joint venture, the bidder must submit a MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) detailing the nature and extent of DBE/MBE participation;

(5) The bidder must certify, in writing, that there are existing subcontracts for all work that has been subcontracted;

(6) The bidder must provide any additional information as requested by the Administration Representative;

d. The apparent low bidder will meet the Administration Representative, upon request, to discuss the DBE/MBE Participation Program.

2. The Administration Representative will send a preliminary evaluation to the apparent low bidder outlining whether its proposed DBE/MBE Participation Program is in compliance with the MDOT DBE/MBE Program. The apparent low bidder may submit written comments to the Administration Representative concerning the evaluation. The Administration Representative will furnish a recommendation to the apparent low bidder and the Administrator regarding the apparent low bidder's DBE/MBE Participation Program.

3. Determination by Administrator

Based on the Administration Representative's evaluation, the Administrator will determine the adequacy of the apparent low bidder's DBE/MBE Participation Program. He/she will decide whether it is in conformance with the MDOT DBE/MBE Program and will issue a written decision. Unless an objection is filed by the apparent low bidder in writing within fifteen (15) business days of the date of the Administrator's decision, the Administrator's determination is final. In the event an objection is filed, the Administrator will send the apparent low bidder a Notice of Opportunity to meet with the Administrator, indicating the date, time, and place. At that meeting, the Administrator may request additional information from the apparent low bidder. Other interested parties may offer information relevant to the issues on which a determination will be based. A copy of the determination will be sent to the apparent low bidder and other interested parties. The apparent low bidder and other interested parties may appeal the Administrator's decision to the Secretary of MDOT with 5 days.

4. Request for a Waiver to DBE/MBE Goal

a. If, for any reason, the prime contractor is unable to award subcontracts to or procure supplies and services worth at least the value of the established contract goal from certified businesses, the contractor will request, in writing, a waiver to this requirement. The request for a waiver shall provide justification to include, but not be limited to, the following:

(1) A detailed statement of the efforts made to contact and negotiate with certified businesses, including:

(a) The names, addresses, dates, and telephone numbers of the certified minority businesses who were contacted; and

(b) A description of the information provided to certified businesses regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed.

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by certified businesses in order to increase the likelihood of achieving the stated goal;

(3) A detailed statement of the reasons for a contractor's conclusion that a certified business is not qualified to perform;

(4) A list of certified businesses contacted but found to be unavailable. This list should be accompanied by Minority Contractor Unavailability Certificates (Form D-EEO-005) signed by the DBE/MBE contractor or a statement from the bidder or offeror that the certified business(es) refused to sign the Minority Contractor Unavailability Certificate.

b. Waiver of the DBE/MBE goal will be granted upon the determination by the respective Administrator that qualified disadvantaged and/or minority business enterprises are not available to participate in a contract to the extent of the stated DBE/MBE contract goal. The Administrations have the sole responsibility for approval or denial of waiver requests. They will also be responsible for maintaining detailed documentation of the contractor's "good faith efforts" to achieve the DBE/MBE goals. Administrations will provide a quarterly report on waiver requests to the Office of MBE (Form D-EEO-025).

5. Failure of Apparent Low Bidder to Furnish Information or Otherwise Participate

The low bidder's failure to participate in any of these proceedings or failure to furnish information after written request may result in rejection of the bid and non-award of the contract to the apparent low bidder.

6. Amendment for Unforeseen Circumstances

If at any time before award, an apparent low bidder believes or has reason to believe that a certified business listed on its MDOT Schedule of Participation of DBE/MBEs is unable to perform or has become unqualified or unavailable, the low bidder will immediately notify the Administration Representative. Within five (5) days, the apparent low bidder must make every reasonable effort to amend the DBE/MBE Participation Program if this is necessary to achieve the contract goal for DBE/MBE participation. Failure to make such efforts may result in a determination that the apparent low bidder is not eligible for award of the contract.

7. Use of certified DBE/MBE for a specific product/service

A DBE/MBE must be certified at the time they are included in a contract to satisfy a contract DBE/MBE goal. A DBE/MBE firm may not be included for a goal if they are "pending certification."

Further, a DBE/MBE firm is certified in specific products and/or services, denoted by SIC/NAICS codes. A DBE/MBE may be used on a contract to satisfy participation goals only in those SIC/NAICS codes for which the firm is certified.

PROCEDURES
CONTRACT APPROVAL PROCESS FOR
STRAIGHT STATE SUPPLY AND SERVICE CONTRACTS

A. **Advertisement**

All invitations to bid shall include the following language:

"Minority business enterprises are encouraged to respond to this solicitation notice." This language is mandatory and may not be varied, and if it is not contained in the solicitation notice, the resulting contract may be considered null and void.

"It is the goal of the Maryland Department of Transportation (MDOT) that certified minority business enterprises participate in a minimum of fourteen percent (14%) of the total dollar value of the Department's supply and service procurement."

B. **MBE Notification -- Procurement above the Level of Small Procurement**

The procedure for an Administration to notify the certified minority business community of procurement opportunities will be as follows:

1. MBE Notification -- Direct Solicitation

   a. Businesses listed in the MDOT DBE/MBE Directory certified in the supply/service being procured which may be reasonably expected to be interested shall be sent a copy of the solicitation notice by the procurement officer. Sufficient DBE/MBEs shall be solicited so as to reasonably assure a response is received from one or more.

   b. Notices will be published in appropriate metropolitan newspapers, including newspapers catering to the minority community. Copies of solicitation notices will also be sent to the following organizations:

      (1) DBE/MBE Technical Assistance Organizations;
      (2) Appropriate DBE/MBE Associations;
      (3) Appropriate DBE/MBE Trade Organizations;
      (4) The Governor's Office of Minority Affairs.

2. MDOT DBE/MBE Notification -- Subcontracting Opportunities

a. Supply, maintenance, and service contracts over $50,000 shall contain a DBE/MBE subcontract participation goal consistent with these special procurement procedures. Contracts of $50,000 or less for supplies, maintenance, or service may establish a DBE/MBE subcontract goal. Each contract above the level of small procurement shall be assessed as to its potential for DBE/MBE procurement participation for such purchases. The appropriate procurement officer shall coordinate this procedure with the Administration's DBE/MBE's Liaison Officer.

b. Whenever the Department establishes a subcontract goal for a contract, each prime contractor must solicit quotations from certified DBE/MBEs. Contractors may obtain the names of certified DBE/MBEs from the MDOT DBE/MBE Directory available from the Administration soliciting bids on the contract.

c. The following statement will appear on bid documents when subcontracting to DBE/MBEs is indicated:

"Certified DBE/MBE subcontract participation goal of ___ percent of the contract has been established for this procurement. The bidder or offeror agrees that unless a formal waiver is requested and is granted, not less than this amount of the contract will be performed by minority business enterprises."

3. DBE/MBE Notification -- Small Procurement

For small procurements, the procurement officer shall seek to attain at least the Departmental goal by direct solicitation from one or more DBE/MBEs for each procurement in categories II and III.

4. DBE/MBE Notification -- Recurring Contracts

Each fiscal year, each Administration's senior procurement officer shall furnish to the Administration's DBE/MBE Liaison Officer, in writing, a complete listing of the approximate solicitation dates of regularly recurring procurement opportunities of $100,000 or more. The list shall include the subject of the contract, the location of the work, or place of delivery, and the name and telephone number of the procurement officer.

C. **Contract Award**

1. Determination of DBE/MBE Bidder Responsibility for Straight State Supply and Service Contracts -- Direct Procurement;

   a. Each firm seeking to furnish supplies or to perform a service in accordance with these special provisions and who seeks to be recognized as a bona fide DBE/MBE must be certified as such by MDOT.

   b. Failure of a DBE/MBE to furnish requested information within 10 working days of bid opening may result in that DBE/MBE being disqualified.

2. Determination by Administrator -- Subcontracting to DBE/MBEs

   a. Based on the Administration Representative's evaluation and approval of a proposed DBE/MBE goal for a contract, the contract may be awarded to the successful bidder in accordance with this special procedure.

   b. The apparent lowest responsive and responsible bidder will provide the Administration DBE/MBE/Procurement Officer with the following items:

      (1) A complete MDOT Schedule for Participation of Minority Business Enterprises (Form D-EEO-003);

      (2) MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004).

   c. Waiver -- If, for any reason, a bidder or offeror is unable to achieve the established DBE/MBE goal, the bidder or offeror may request, in writing, a waiver of the goal with justification according to the procedures in this manual.

3. Request for Waiver of the DBE/MBE Goal

   a. If a bidder or offeror is unable to achieve the goal for DBE/MBE participation, he/she must provide a detailed statement of the good faith efforts made to select portions of the work/service/supply proposed to be performed by DBE/MBEs and a detailed statement of the good faith efforts made to contract and negotiate with DBE/MBEs. At a minimum, the statement of good faith efforts shall include:

(1) The name, address, date and telephone number of DBE/MBEs contacted;

(2) The description of the information provided to DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;

(3) A detailed statement of the reasons why a DBE/MBE quotation was considered unacceptable; and

(4) A list of minority subcontractors found to be unavailable. For DBE/MBE subcontractors who are unavailable, a Minority Contractor Unavailability Certificate (Form D-EEO-005) signed by the minority business enterprise shall be provided. If the minority business refused to sign the unavailability certificate, the bidder or offeror shall submit a statement indicating as such.

b. An affidavit completed and signed by the prime contractor stating that in the solicitation of subcontracts, quotations or offers, DBE/MBE subcontractors were provided not less than the same information and amount of time to respond as were non-DBE/MBE subcontractors and that the solicitation process was conducted in such a manner as to otherwise not place DBE/MBE subcontractors at a competitive disadvantage to non-DBE/MBE subcontractors.

c. Any other documentation considered appropriate by the Administration to ascertain bidder responsibility and/or bid responsiveness in connection with the contract DBE/MBE participation goal.

The contractor, by submitting a bid or offer, consents to provide such documentation as requested by the Department/Administration or pursuant to the compliance section, and to provide right of entry at any reasonable time for the purpose of the State's representatives to verify compliance with the DBE/MBE subcontractor requirements.

4. Failure of a Bidder to Furnish Information or Otherwise Participate

The bidder's failure to participate in any of these proceedings or failure to furnish information after a written request may result in rejection of the bid and non-award of the contract to the apparent low bidder.

5. Amendment for Unforeseen Circumstances

If at any time before award, an apparent low bidder believes or has reason to believe that a certified business listed on the MDOT Schedule of Participation of DBE/MBEs is unable to perform or has become unqualified or unavailable, the low bidder will immediately notify the Administration Representative. Within five (5) working days, the apparent low bidder must make every reasonable effort to amend the DBE/MBE Participation Program if this is necessary to achieve the contract goal for DBE/MBE participation. Failure to make such efforts may result in a determination that the apparent bidder is not eligible for award of the contract.

D. **Reports**

1. The Administration's DBE/MBE Representative shall submit monthly written reports to the Office of Minority Business which identify the number of DBE/MBEs utilized and the dollar amounts for minority participation in procurement contracts, both as direct purchases and subcontracting.

2. Appropriate records shall be maintained by the Procurement Officer on all invitations for bids, together with documentation of good faith efforts toward obtaining DBE/MBE participation and goal attainment.

3. Records for small procurement shall be filed by Administration Procurement Officers and a monthly report will be forwarded to the Administration's DBE/MBE Liaison Officer on a prescribed form.

4. A monthly supply and service contracts report shall be prepared by each Administration's Procurement Officer and forwarded to the Administration's DBE/MBE Liaison Officer with the following information:

   a. The total number and value of its procurement from certified DBE/MBEs as prime contractors, and separately as subcontractors;

   b. The percentage of purchases that represent the total number and value of its procurement from minority business enterprises the previous month;

   c. The total number of waivers granted.

5. The Department shall submit an annual report within 90 days after the end of the fiscal year to the Office of Minority Affairs.

(See Special Provisions for Straight State Contracts - Attachment 2)

PROCEDURES
CONTRACT APPROVAL PROCESS
FOR FEDERAL-AID CONTRACTS

A. **Advertisement**

All invitations to bid will include the following information:

"The Maryland Department of Transportation (MDOT) hereby notifies all bidders that in regard to any contract entered into pursuant to this advertisement, whenever the term "disadvantaged "or" minority" is used, it is understood to include women. The terms "disadvantaged "and" minority" include certified female owned businesses, which will be afforded full opportunity to submit bids in response to this notice and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award."

"It is the goal of MDOT that disadvantaged business enterprises participate in all federal-aid contracts. Each contract will be evaluated for the placement of a goal for DBE/MBE participation on a contract-by-contract basis."

B. **DBE/MBE Notification**

The procedure for the Administration to notify the certified business community of contract opportunities will be as follows:

1. Notice of Invitation to Bid -- DBE/MBEs listed in the MDOT DBE/MBE Directory certified in the work being advertised may, upon request, be sent a Notice of Invitation to Bid;

2. Notices will be published in appropriate metropolitan newspapers, including newspapers catering to the minority community. Copies of solicitation notices will also be sent to the following organizations:

   a. DBE/MBE Technical Assistance Organizations;
   b. Appropriate DBE/MBE Associations;
   c. Appropriate DBE/MBE Trade Organizations;
   d. The Governor's Office of Minority Affairs.

3. Plans and Specifications -- Plans and specifications on all projects will be made available, upon request, to minority contractor associations and trade organizations;

4. List of Planholders -- The names of firms requesting bid documents will be made available upon request to those DBE/MBEs listed in the MDOT DBE/MBE Directory who indicate interest in the subcontract work to be performed;

5. MDOT DBE/MBE Directory -- For each firm obtaining plans and specifications for MDOT projects, the Administration will make available pertinent portions of the MDOT DBE/MBE Directory listing those firms certified to perform the work identified by the Administration, to be used in soliciting subcontract bids from DBE/MBE firms.

C. **Pre-Bid Conference**

At each Pre-Bid Conference an Administration Representative will review the Special Bid Provisions (Attachments 3-6) for Federal-aid contracts and explain the appropriate contract goal for each federal-aid contract. The Administration Representative will review with the prospective bidders the detailed steps to assure compliance with the MDOT DBE/MBE Program requirements.

D. **Contract Award**

1. Determination of Bidder Responsibility:

a. Prior to the contract award, the apparent low bidder will be required to submit certain documentation indicating participation by certified DBE/MBEs on the contract when a DBE/MBE participation goal exists for that contract;

b. The apparent low bidder may use the services of the Administration DBE/MBE Resource Unit to assist in the development of its DBE/MBE Participation Program;

c. The apparent low bidder will provide the Administration Representative with the DBE/MBE Participation Program which contains the following:

(1) The name of an employee designated as the bidder's liaison officer for minority business;

(2) A completed MDOT Schedule for Participation of Minority Business Enterprises (Form D-EEO-003) for the DBE/MBEs the bidder intends to utilize if awarded the contract. The Schedule will show the agreed upon prices to be paid for each DBE/MBE and a detailed listing of the contract items to be performed by the certified business with the timetable for the work to be performed;

(3) The MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004) completed and signed by the bidder or offeror and each certified DBE/MBE contained in the Schedule of Participation. This statement is an agreement by the bidder or offeror with the certified business for the subcontract work and/or materials and services listed in the Schedule to become effective after the award of the contract to the apparent low bidder;

(4) If the bidder intends to attain the contract goal for DBE/MBE participation through the use of a non-DBE/MBE; DBE/MBE joint venture, the bidder must submit a MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) detailing the nature and extent of DBE/MBE participation;

(5) The bidder must certify, in writing, that there are existing subcontracts for all work that has been subcontracted;

(6) The bidder must provide any additional information as requested by the Administration Representative;

d. The apparent low bidder will meet the Administration Representative, upon request, to discuss the DBE/MBE Participation Program.

2. Determination by Administrator

Based on the Administration Representative's evaluation, the Administrator will determine the adequacy of the apparent low bidder's DBE/MBE Participation Program. He/she will decide whether it is in conformance with the MDOT DBE/MBE Program and will issue a written decision. Unless an objection is filed by the apparent low bidder in writing within fifteen (15) business days of the date of the Administrator's decision, the Administrator's determination is final. In the event an objection is filed, the Administrator will send the apparent low bidder a Notice of Opportunity to meet with the Administrator, indicating the date, time, and place. At that meeting, the Administrator may request additional information from the apparent low

bidder. Other interested parties may offer information relevant to the issues on which a determination will be based. A copy of the determination will be sent to the apparent low bidder and other interested parties. The apparent low bidder and other interested parties may appeal the Administrator's decision to the Secretary of MDOT for administrative reconsideration. The final decision of the Secretary is not administratively appealable to the U.S. DOT.

3. Request for Waiver of DBE/MBE Goal

a. If, for any reason, the contractor is unable to meet the goals specified in the contract, the contractor will request, in writing, a waiver to this requirement. The request for a waiver shall provide justification to include, but not be limited to, the following:

(1) A detailed statement of the efforts made to contact and negotiate with DBE/MBEs including:

(a) The names, addresses, dates and telephone numbers of the DBE/MBEs who were contacted; and

(b) A description of the information provided to DBE/MBEs requesting the plans, specifications, and anticipated time schedule for portions of the work to be performed.

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBE/MBEs in order to increase the likelihood of achieving the stated goal;

(3) For DBE/MBEs that the contractor considers not to be qualified, but from which a bid has been received, a detailed statement of the reasons for the contractor's conclusion;

(4) A list of DBE/MBE contractors contacted but found to be unavailable. This should be accompanied by a Minority Contractor Unavailability Certificate (Form D-EEO-005) either signed by the DBE/MBE contractor or include a statement from the bidder that the DBE/MBE contractor refused to sign the Minority Contractor Unavailability Certificate.

b. A waiver of the DBE/MBE goal will be granted upon the determination by the respective Administrator that qualified disadvantaged and/or minority business enterprises are not available to participate in a contract to the extent of the stated DBE/MBE contract goal. The Administrations have the sole responsibility for approval or denial of waiver requests. They will also be responsible for maintaining detailed documentation of the contractor's "good faith efforts" to achieve the DBE/MBE goals. Administrations will provide a quarterly report on waiver requests to the Office of MBE (Form D-EEO-025).

4. Failure of Apparent Low Bidder to Furnish Information or Otherwise Participate

The low bidder's failure to participate in any of these proceedings or failure to furnish information after a written request may result in rejection of the bid and non-award of the contract to the apparent low bidder.

5. Amendment for Unforeseen Circumstances

If at any time before award, an apparent low bidder believes or has reason to believe that a certified business listed on its MDOT Schedule of Participation of DBE/MBEs is unable to perform or has become unqualified or unavailable, the low bidder will immediately notify the Administration Representative. Within five (5) days, the apparent low bidder must make every reasonable effort to amend the DBE/MBE Participation Program if this is necessary to achieve the contract goal for DBE/MBE participation. Failure to make such efforts may result in a determination that the apparent low bidder is not eligible for award of the contract.

6. Statement of Non-Discrimination

In accordance with 49 CFR Part 26, Section 26.13, the following statement must be included in every contract between MDOT and a contractor and in every subcontract of that contract:

The contractor, subcontractor, or subrecipient (grant recipient) shall not discriminate on the basis of race, color, national origin, or sex in 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 MDOT deems appropriate.

PROCEDURES
CONTRACT APPROVAL PROCESS
FOR FEDERAL-AID CONSULTANT AGREEMENTS

A. Advertisement

All Solicitations of Interest (SOI) will include the following information:

"The Maryland Department of Transportation (MDOT) hereby notifies all proposers that in regard to any contract entered into pursuant to this advertisement, DBE/MBEs will be afforded full opportunity to submit expressions of interest in response to this notice and will not be subjected to discrimination on the basis of race, color, sex, or national origin, in consideration for an award."

"It is the goal of MDOT that disadvantaged business enterprises participate in all Federal-aid contracts. Each contract will be evaluated for the placement of a goal for DBE/MBE participation on a contract-by-contract basis."

B. DBE/MBE Notification

The procedure for the Administration to notify the disadvantaged and minority consultant community of contract opportunities will be as follows:

1. Solicitations of Interest -- DBE/MBEs listed in the MDOT DBE/MBE Directory certified in the work being advertised may request to be sent Solicitations of Interest (SOIs) for specific projects;

2. Notices (SOIs) will be published in appropriate metropolitan newspapers, including newspapers catering to the minority community. Copies of solicitation notices will also be sent to the following organizations:

   (1) DBE/MBE Technical Assistance Organizations;
   (2) Appropriate DBE/MBE Associations;
   (3) Appropriate DBE/MBE Trade Organizations;
   (4) The Governor's Office of Minority Affairs.

3. Solicitations of Interest on all projects will, when requested, be made available to known DBE/MBE consultant associations by the Administration;

4. MDOT DBE/MBE Directory -- Each firm wishing to submit an expression of interest on MDOT projects may obtain a copy of the pertinent portions of the MDOT DBE/MBE Directory to be used in soliciting subcontractor input from DBE/MBE consultants. The Directory will indicate whether a certified business is eligible for straight state work, Federal aid work, or both.

C. **Consultant Selection**

1. Determination of Consultant Responsive for Federal-Aid Consultant Agreements, Expressions of Interest:

   a. Proposers who submit letters of interest pursuant to the MDOT Consultant Selection Guidelines will submit with their expression of interest a completed DBE/MBE Schedule for Utilization-Consultant Expression of Interest (Form D-EEO-003A);

   b. The Administration Representative will review all submittals for completeness and verify percentages allocated to DBE/MBEs by participating proposers to determine conformance with the contract goals;

   c. The Administration Representative will analyze all proposers' DBE/MBE schedules to determine the following:

      (1) All DBE/MBEs have been certified by MDOT in the areas of work contained in the solicitation.

      (2) If proposers have not met the contract goal, sufficient documentation is provided to show that good faith efforts to meet the contract goals have been made.

2. Final DBE/MBE Participation Program with Reduced Candidate List Proposals

   a. The Reduced Candidate List proposer who has been asked to submit technical and price proposals will be asked to submit, at the same time in a separate sealed envelope labeled "DBE/MBE Package", its DBE/MBE Participation Program, complete and ready for evaluation;

   b. DBE/MBE Participation Programs submitted with proposals will be evaluated on the basis of the DBE/MBE goal which equals or may exceed the contract goals. If the proposer fails to attain the contract goals, sufficient documentation must be submitted to show why the contract goals were not attained;

   c. Proposals will be evaluated in accordance with the MDOT Consultant Selection Guidelines procedures.

3. Contract Award

Based on the Administration's evaluation of proposals and DBE/MBE goal attainments together with documentation showing good faith efforts if goals are not attained, the contract may be awarded to the successful proposer in accordance with normal contract award procedures.

D. **Disqualification**

Failure to furnish DBE/MBE information after a written request may result in the proposer being disqualified.

E. **Statement of Non-Discrimination**

In accordance with 49 CFR Part 26, Section 26.13, the following statement must be included in every contract between MDOT and a contractor and in every subcontract of that contract:

The contractor, subcontractor, or subrecipient (grant recipient) shall not discriminate on the basis of race, color, national origin, or sex in 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 MDOT deems appropriate.

PROCEDURES
CONTRACTOR COMPLIANCE PROCESS

A. **Contract Monitoring**

All Maryland Department of Transportation compliance monitoring of certified DBE/MBE participation will be conducted in accordance with the following.

1. Review of Compliance Requirement -- Upon issuance of the Notice to Proceed, the Administration's Contract Staff will forward a copy of the Notice to Proceed to the Administration's Representative. Upon receipt of this notice, the Administration's Representative will contact the contractor to describe the specific compliance process, its time frames and give the contractor a Compliance Assistance Package. This package should contain suggested guidelines, forms and other materials. Compliance requirements are to be included in the contract proposal and discussed at the Pre-Bid and Pre-Construction meetings.

2. DBE/MBE Participation Reports -- On at least a quarterly basis, the contractor will be required to submit the DBE/MBE Participation Report which, at a minimum shall include:

   a. Identification of the DBE/MBEs participating on the project;
   b. Type of work being done by each;
   c. Percentage of completion of work on project and of each DBE/MBE contract;
   d. Dollar amount of project and each DBE/MBE subcontract;
   e. Actual monies paid during the reporting period and to date to the DBE/MBE;
   f. Work Force roster of the Prime contractor;
   g. Comments by the contractor.

Any participating DBE/MBE must serve a commercially useful function on a contract and not function as a broker, unless certified as a broker (insurance, real estate, etc.). A firm is considered to perform a commercially useful function when it executes a distinct element of work by actually performing, managing and supervising the work involved and/or negotiating the cost of, arranging and accepting delivery of, and paying for the materials or supplies required for the work of its contract. A contractor may count toward its DBE/MBE goal 60 percent of its expenditures for materials and supplies required under the contract and obtained from a DBE/MBE regular dealer, and 100 percent of such expenditures to a DBE/MBE manufacturer. The DBE/MBE credited supplies may not exceed 60 percent of the entire contract goal. Large supply items must comply with other provisions of this Manual.

If, at any time before execution of the contract, the contractor determines that the designated DBE/MBE subcontractor has or will become unavailable, the contractor shall notify the Administration immediately. Any change in the schedule of participation must be approved in advance by the Administration and shall indicate the contractor's good faith efforts to substitute another certified DBE/MBE subcontractor to perform the work.

3. Fees may be counted by a contractor towards its DBE/MBE goals for the following expenditures to DBE/MBE firms that are not manufacturers or regular dealers:

   a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee or commission is determined by MDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   b. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by MDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   c. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by MDOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. Third tier contracting is not the usual way for a prime contractor to achieve a DBE/MBE goal. However, the Department also realizes that there may be rare occasions when third tier contracting would be acceptable. Two conditions must be met before an Administration may approve a third tier contracting arrangement which may be entered into to meet a DBE/MBE goal:

   a. The Administration awarding the contract must be satisfied that there is no way except by third tier contracting that a DBE/MBE goal can be achieved;

b. The prime contractor must request of the Administration, in writing, prior to the awarding of a contract, that approval be granted for each third tier contract arrangement. The request must contain the specifics as to why a third tier contracting arrangement is being requested to meet the DBE/MBE goal.

An Administration approving a third tier contract should do so in writing, setting forth the parameters of the third tier contract. All records of third tier contracts will be maintained by the Administration granting approval.

Third Tier Contracting is to be considered the exception and not the rule. If the third tier results from a DBE/MBE subcontracting to a non-DBE/MBE third tier contractor, this participation shall not be counted as DBE/MBE participation towards goal attainment.

B. **Review of Project Engineer's Files**

The Administration's Representative shall periodically review records maintained at the project site concerning work being done on the project. The Project Engineer is responsible for maintaining accurate records on a daily basis, regarding the participation of all DBE/MBEs at the work site. The Inspector's Daily Reports (IDR) and Daily Construction Logs should clearly depict DBE/MBE activities as such.

C. **Contractor Notification**

The Administration's Representative will provide written notification to the contractor of a pending compliance review at least three (3) days prior to the formal compliance review. This notification will inform the contractor of the date, time and location of the review. The contractor shall have the following available for inspection:

1. Copies of purchase orders and subcontracts containing Equal Opportunity clauses.

2. Records to indicate the number, names, dollar value of the certified business' subcontracts, the amount, dates, scheduled times for each certified business to be on the job site and the payments to subcontractors.

3. If a Third Tier or Lower Tier arrangement is approved as a method to achieve the required minority business participation, copies of all Requests for Lower Tier Subcontractors must be available in the contractor's files. All requirements pertaining to subcontractors also apply to Third Tier or Lower Tier Subcontractors.

4. Any other appropriate documents requested prior to the actual on-site visit.

D. **Compliance Review**

To ensure compliance with participation goals, compliance reviews should be conducted on each contract for each contractor. On-site verification and interviews will include, but not be limited to, the following:

1. An initial meeting of the Administration's Representative with the contractor's DBE/MBE liaison officer to explain the objectives of the visit;

2. Administration's Representative review of documents identified in Section C above, to be made available by the contractor;

3. Administration's Representative tour of the job site;

4. Administration's Representative interviews and reviews all of the records and documents pertaining to the subcontractors, suppliers, etc.;

5. A conference with the contractor's DBE/MBE liaison officer, to discuss any deficiencies noted and advise of corrective actions to be taken.

E. **Compliance Review Information Analysis**

Upon completion of the on-site verification phase, the Administration's Representative will review all available information including documents provided by the contractor and obtained from the on-site visit. A report indicating compliance status will be prepared and submitted to the Administrator, with a copy sent to the Administration's Contract Compliance Officer.

F. **Determining Compliance**

Based on the information obtained from the documents presented by the contractor, the DBE/MBE subcontractor, and the suppliers, the Administration's Representative will determine if the contractor is in compliance with requirements of the DBE Program. The determination will be based upon an evaluation of the manner in which the contractor has implemented the proposed DBE/MBE commitments, has utilized DBE/MBE firms and paid DBE/MBE firms. Additional specific compliance standards also require the contractor to ensure that:

1. DBE/MBEs may supplement their own work force below the level of supervision but may not use any employees of the prime or any other subcontractor working on the project except in those instances when a specialized piece of equipment is leased from the prime contractor and the skilled operator must be used. In an emergency and with appropriate advance approval, the DBE/MBE may augment its work force with employees of the prime contractor, but in no case, for more than five percent of the subcontractor's work force;

2. The DBE/MBE has not acted as a broker on the project but is serving a commercially useful function;

3. The DBE/MBE has not further sublet the work to any other business, unless provided for elsewhere in these regulations;

4. The DBE/MBE is in control of the work and the work force;

5. Management and supervisory functions are performed by employees of the DBE/MBE. Employees are defined as persons who are hired and managed by an employer who takes responsibility for their pay, withholding of tax and provision of other benefits;

6. DBE/MBE demonstrates competence and technical knowledge to perform subcontracted work;

7. No double payee checks are issued other than for supply purchases.

G. **Compliance**

If it is determined that a contractor is in compliance, the Administration's Representative will send notification of findings to the contractor and to the Administration's Contract Compliance Officer.

H. **Non-Compliance**

If it is determined that a contractor is not in compliance, the Administration's Representative may initiate an investigation. The Administration's Representative will notify the contractor of the results of the investigation as soon as practicable. The contractor and the Administration's Representative may meet informally to remedy any problems of compliance.

In the event conciliation fails, the Administration's Representative will inform the Administrator that the contractor is in non-compliance. The Administrator may issue a "Show Cause Notice" which will delineate the deficiencies noted in the findings, establish a compliance conference date, outline the administrative actions to be taken, and provide a forum for the contractor to show that he is in compliance. A copy of the "Show Cause Notice" will be sent to the Administration's Contract Compliance Officer.

A finding of suspected certification or MBE fraud will not be shared with the contractor, or with the DBE/MBE. The available information shall be given to the MDOT Office of MBE or the MDOT Office of General Counsel.

I. **Compliance Conference**

At the discretion of the Administrator, a compliance conference will be held between the Administrator, the Administration's Contract Compliance Officer, and Representative and the contractor.

1. If the contractor corrects the deficiencies, the "Show Case Notice" will be rescinded and the contractor will be notified of his compliance (copy to the Administration's Contractor Compliance Officer).

2. If the contractor refuses to take the steps necessary to correct the deficiencies and rescind the "Show Case Notice," the Administrator will begin administrative action against the contractor.

J. **Administrative Procedures for Enforcement**

Once the contractor has been issued the "Show Cause Notice," he will have an opportunity to comply with the corrective actions outlined in the Notice. If the contractor fails or refuses to comply with the corrective actions, the Administration's Representative will recommend imposing sanctions.

The Administration's Representative will prepare a report of non-compliance, with recommendations for sanctions to be submitted to the Administrator. The report will recommend one or more of the sanctions listed below:

1. Suspension of work on a project, pending correction;

2. Withholding payment or a percentage thereof, pending correction;

3. Referral of DBE/MBEs to MDOT Office of MBE for review for decertification or minority business fraud investigation;

4. Referral to MDOT Office of MBE for review/referral to the Attorney General's Office for review for initiation of debarment;

5. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel; or

6. Any other action as appropriate.

The Administrator will determine which sanction(s) should be imposed in order to promote the purpose of the MDOT DBE/MBE Program.

K. **Secretary's Report of Non-Compliance**

The Secretary will have final approval of all administrative sanctions imposed on contractors for non-compliance. In those instances where the Board of Public Works has the final authority, the Secretary will initiate proceedings to bring the matter before the Board of Public Works.

L. **Records and Reports**

The contractor shall keep such records as are necessary to determine compliance with its DBE/MBE commitments. These records must be in sufficient detail to indicate the number of certified businesses, the subcontract work performed, and the percentage of DBE/MBE participation. Additionally, the contractor is required to maintain an open file for three (3) years past the date of contract completion for maintenance of a project, during which time the Administration's Representative or the MDOT representative may make periodic reviews of records pertaining to relevant contracts.

M. **Competency**

Competency is not an issue in determining if a firm meets the criteria for certification as a DBE/MBE. In reviewing the firm's operations, MDOT evaluates (1) evidence of financial responsibility, (2) evidence of ability to perform the work or service and, (3) evidence of actual contract performance. These factors assist MDOT to determine if the firm is functioning independently and under managerial and operational control of the minority individual.

To aid in the review of operational and managerial control, if the applicant is a new business and has engaged in no contracts, a reasonable business plan will be prepared and submitted with the application for MDOT DBE/MBE certification in lieu of evidence of actual contract performance. A DBE/MBE must demonstrate technical knowledge in the area for which his/her business is certified and demonstrate evidence of supervision and management of his/her work force.

Since the status of firms may fluctuate according to external factors (economy, interest rates, etc.), MDOT's Certification Agency cannot guarantee that DBE/MBEs determined at the time of original certification to be bona fide will be able to work throughout the life of the certification period.

Competency as it relates to contract performance shall be an element to be considered in contract administration. In order to continually monitor the competency of certified DBE/MBE businesses, each MDOT Administration will ensure that the reports included in Attachment 13, noted below, are promptly completed and forwarded to the Office of Minority Business Enterprise, attention Director. These reports will become an integral element in the recertification procedures.

Attachment 13:

1. Form D-EEO-037 (April 1987) Subcontractor's Performance Evaluation - Project Completion

2. Form D-EEO-038 (April 1987) Subcontractor's Performance Evaluation - Annual Report

3. Form D-EEO-039 (April 1987) Report of Unsatisfactory Subcontractor Performance/Progress

4. Form D-EEO-022 (January 1988) Minority Business Evaluation for Recertification.

Note The above forms are noted for demonstration purposes only. The specific content and format are not to be considered regulation.

N. Contract Compliance - Trucking

A trucking firm, including an owner/operator trucker who wishes to participate as a DBE/MBE on any project of the Maryland Department of Transportation (MDOT), must be certified as a DBE/MBE by MDOT. Truckers, as with other subcontractors, may receive participation credit for the use of their vehicles in fulfilling contract specifications.

1. A DBE/MBE trucking company must own and have in operation at least one fully licensed, insured and operational truck to be used on a contract.

2. A DBE/MBE trucking company must perform a commercially useful function (that is, responsible for the execution of a distinct element of work of a contract and carrying out its responsibilities by performing, managing and supervising the work involved). The DBE/MBE trucker, in the light of industry practice and other relevant considerations, must have a necessary and useful role in a transaction for which there is a market outside of the context of the DBE/MBE Program. The firm's role cannot be a superfluous step added in an attempt to obtain credit goals.

3. The DBE/MBE must be responsible for the management, control and supervision of the entire trucking operation for which it is under contract on a project, without any contrived arrangement to meet DBE/MBE goals. Control includes the DBE/MBE trucker being responsible for scheduling, dispatching, paying employees, maintaining the trucks and keeping complete and accurate business records.

4. The DBE/MBE receives credit for the total value of transportation services it provides using trucks it owns, insures and operates using drivers it employs.

5. The DBE/MBE may lease trucks from another DBE/MBE firm, including owner/operators who are DBE/MBEs. Credit shall be given for total value of the transportation services the DBE/MBE provides as the subcontractor on a project.

6. The DBE/MBE may lease trucks from a non-DBE/MBE firm. When this is done, the DBE/MBE may receive credit only for the fee it receives as a result of the lease arrangement. The DBE/MBE does not receive credit for the total value of the transportation services provided since the services are not all provided by a DBE/MBE.

A. OWNER/OPERATOR

1. The DBE/MBE trucker who has ownership of one truck is a owner/operator. An owner/operator must be able to perform the contracted work items with the vehicle titled to the owner/operator.

2. The DBE/MBE trucker must have a written agreement with the prime contractor prior to performing any services on the project.

   a. The written agreement shall indicate hours and/or tonnage price per load, mileage, cost of waiting time, if any, and the time of notification prior to reporting to work.

   b. The written agreement should reflect the trucker's proposed goal as indicated on the prime contractor's approved Affirmative Action Plan.

   c. The written agreement must be available upon the request of an Administration's Representative.

B. REGULAR DEALER

1. A DBE/MBE trucker is also a regular dealer if he or she owns and operates a warehouse or storage facility from where supplies are distributed.

2. The DBE/MBE Trucker/Regular Dealer must be recognized by the public and construction industry as a regular dealer. The DBE/MBE must also own distribution equipment to deliver bulk items too large to stockpile or store.

3. Sixty percent (60%) of the cost of supplies may be included for DBE/MBE credit (the cost should include the delivery charges) for a material hauler who is a DBE/MBE trucker who is also a regular dealer and certified as such by MDOT.

4. One hundred percent (100%) of the cost of materials is given for DBE/MBE credit when a DBE/MBE trucker is the manufacturer and operator of a material plant. A manufacturer must produce its product from raw materials. The DBE/MBE trucker must be certified as a manufacturer by MDOT.

C. LEASE/RENTAL OF VEHICLES

1. The DBE/MBE trucker may rent or lease trucks from an equipment rental firm to increase the number of trucks within the DBE/MBE firm. In this case, when the DBE/MBE trucker is responsible for the hiring and supervision of the drivers and maintenance and insurance of the trucks, these trucks are considered to be operated and controlled by the DBE/MBE trucker, therefore these trucks are counted for participation the same way as trucks owned by the DBE/MBE.

2. The DBE/MBE trucker must have a rental/lease agreement indicating the leaseholder's name, a description of the truck, including its identification number, the duration of the lease and the cost of the lease. This document shall be available for review by an Administration's Representative.

3. Any lease must indicate that the DBE/MBE has exclusive use of and control over the truck(s) under lease. The leased truck(s) may work for others during the term of the lease with the consent of the DBE/MBE as long as the DBE/MBE has absolute priority for the use of the leased truck(s). All leased trucks must display the name and identification number of the DBE/MBE firm indicating a leased truck i.e., "leased by..." A lease or written agreement includes written purchase orders.

D. STATE HIGHWAY ADMINISTRATION REPORTING

A DBE/MBE trucker who is providing three or more trucks on a project shall submit a weekly report, "The Weekly Report of MBE Trucking Activities" (template to be obtained from the State Highway Administration) to the prime contractor. The prime contractor shall submit this report to the Project Engineer as a part of the weekly payroll.

COMPLAINTS

The following guidelines are established to provide guidance to the Office of Minority Business Enterprise on how complaints against Maryland certified Disadvantaged Business Enterprises/Minority Business Enterprises are to be accepted, investigated, assessed and reported on and should not be interpreted as implying any due process rights.

TYPES OF COMPLAINTS

THIRD PARTY CHALLENGES

Any person or organization may challenge the socially and economically disadvantaged status of any individual presumed to be socially and economically disadvantaged if that individual is an owner of a Maryland certified disadvantaged or minority business enterprise.* Such a challenge is to be made in writing and the procedures for the same are detailed in the Minority Business Enterprise Program Manual. The State's final decision regarding a third party challenge may be appealed to the U.S. Department of Transportation.

*Exception - An individual who is designated a Native American/American Indian by U.S. Government action, and the challenge is based on minority group membership.

ALL OTHER TYPE COMPLAINTS

Any person who believes himself or herself, another person or any specific class of individuals to be affected by a violation of MDOT's Minority Business Enterprise Program may file a complaint via telephone (1-800-544-6056) or in writing, signed and dated, to the MDOT Office of Minority Business Enterprise. The complaint must be filed within 180 days of the date of an alleged violation or the dates on which a continuing violation was known to the complainant.

COMPLAINT PROCESS

Written complaints or complaints taken over the telephone shall be forwarded to the Manager, Recertification Unit, for appropriate handling. Anonymous complaints shall be evaluated on a case by case basis for appropriate investigation and follow-up action.

If sufficient and reasonable evidence cannot be obtained from the complainant(s), the complaint investigation may not proceed. Appropriate records will be maintained regarding the dispositions of all cases. Documentation on all complaints shall be maintained.

Unless prohibited by Federal law, the identity of the complainant shall be confidential for complaints involving certified DBEs or involving federally financed contracts.

If the confidentiality of a complainant would hinder the investigations, 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 confidentiality. In some circumstances, failure to waive confidentiality may result in closure of the investigation.

DETERMINATIONS

Upon completion of the investigation, the MDOT Director, Office of Minority Business Enterprise, or his/her designee, will inform the respondent and complainant of the results of the investigation, in writing. If the investigation indicates a failure to comply with the requirements of the DBE/MBE Program, the Director or his/her designee will make a final report which may recommend the imposition of one or more of the sanctions below:

A. Suspension of work on the project pending correction;

B. Withholding payment or a percentage thereof;

C. Any other action as appropriate.

The Director may initiate one or more of the following sanctions:

A. Referral to the MDOT Office of General Counsel, Attorney General's Office for initiation of decertification proceedings;

B. Referral to the MDOT Office of General Counsel, Attorney General's Office for initiation of suspension and/or debarment proceedings in accordance with COMAR regulations;

C. Referral to the MDOT Office of General Counsel, Attorney General's Office for consideration of criminal prosecution;

D. Any other action as appropriate.

The Office of General Counsel, Attorney General's Office, may refer a firm to the U.S. Department of Justice for prosecution of any person who makes a false or fraudulent statement in connection with participation of any DBE in any U.S. DOT assisted program or otherwise violates applicable Federal statutes. (49 CFR Part 26, 26.107.)

INTIMIDATION OR RETALIATION

No contractor or other person shall intimidate, coerce, threaten, or discriminate against any individual or firm to interfere with any right or privilege secured by participation in the DBE/MBE Program, by filing a complaint or by testifying, assisting or participating in an investigation, proceeding or hearing.

ESTABLISHMENT OF ANNUAL PROGRAM GOAL

The Secretary of the Maryland Department of Transportation, with the advice of the Director of the Office of Minority Business Enterprise and Modal Administrators, shall establish a Department-wide annual program goal for the utilization of disadvantaged and/or minority business enterprises. This goal shall be expressed in terms of a percentage of the total dollar value of all contracts to be awarded by the Department.

The actual determination of goals shall be on a contract by contract basis, based on specific factors of the nature of work, availability of firms, geographic factors and other pertinent facts that narrowly tailor the actual goal set on any individual contract. The goal setting process, waiver process and good faith efforts are described in detail in other sections of this Manual. In accordance with 49 CFR Part 26, for federally assisted contracts, neither set-asides nor quotas shall be used.

To aid the Secretary to arrive at the annual DBE/MBE participation percentage goal, each of the MDOT's Modal Administrations is required to submit to the Secretary of the Maryland Department of Transportation as near as feasible to August 31st of each year, its DBE/MBE participation program work plan for the following fiscal year. This plan should set forth the Administration's annual DBE/MBE participation goal and shall include supporting statistical and anecdotal data to clearly document the reasons the Modal Administration DBE/MBE participation goal is being established at the level indicated. At a minimum the plan should include but not be limited to:

A. A written analysis by each Modal Administration to describe and substantiate the reason(s) for establishing its annual DBE/MBE participation percentage goal at the level set forth in its work plan.

B. An annual DBE/MBE participation work plan that shall include a numerical projection of the number and dollar value of contracts to be solicited during the upcoming fiscal year in the following areas:

1. Architectural and Engineering Services
2. Construction
3. Maintenance
4. Supplies/Equipment
5. Services

C. Each Modal Administration shall provide a brief description of the level of contractual opportunities by procurement category and the level of DBE/MBE participation that is expected to be achieved by the Modal Administration in each category.

D. Each Modal Administration shall provide a statistical analysis of the results of its DBE/MBE participation program for the past fiscal year to include an analysis of its strengths and weaknesses and any factors that contributed to the achievement or non-achievement of the Administration's DBE/MBE participation goal.

E. Each Modal Administration shall make an analysis of the number of certified DBE/MBEs listed in the MDOT's DBE/MBE Directory to project its annual DBE/MBE participation goal based on the type and number of expected procurement opportunities to be awarded in the upcoming fiscal year.

F. Each Modal Administration shall make an analysis of the feasibility of increasing the subcontracting participation level on major projects on which it can reasonably expect a large number of subcontract opportunities to be awarded.

The Office of the Secretary shall publish a notice announcing the Department's Annual DBE/MBE Program goal. The goal and a description of how it was developed shall be made available for inspection during normal business hours in the Department's Office of Minority Business Enterprise, 10 Elm Road, Baltimore Washington International Airport, Maryland, for 30 days following the date of the notice.

The notice to be published by the Office of the Secretary shall inform the public that the MDOT will accept comments on the goals for 45 days from the date of the notice. The notice shall include addresses to which comments may be sent and shall be published in general circulation media, trade association publications, and the Maryland Register. It shall state that comments are for informational purposes only. The Office of the Secretary will also submit its overall goals to U.S. DOT for approval in accordance with U.S. DOT requirements.

CONTRACT GOALS

Written Solicitation Requirements
Disadvantaged and/or Minority Business Enterprise Subcontract Participation

FOR PURPOSES OF THIS CONTRACT A GOAL OF____ PERCENT HAS BEEN ESTABLISHED FOR DISADVANTAGED AND/OR MINORITY BUSINESS ENTERPRISE PARTICIPATION.

GOAL - An Annual Program Goal is established each year. Contract goals are established for each specific contract based on specific factors affecting such goals. An Overall Goal under 49 CFR Part 26 is established each year for each of the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration. These are discussed in greater detail within this Manual.

A. Bidder's Action

1. The bidder (used to signify the apparent successful bidder) will seek commitments from certified businesses by subcontract or otherwise, for supplies and services the combined value of which equals or exceeds the goals established for a specific contract. A bidder may count toward its DBE/MBE goal expenditures for materials and supplies obtained from certified business suppliers, provided that the certified businesses assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a certified business supplier that manufactures or produces goods from raw materials or that substantially alters goods before resale. The bidder may count 60 percent of the expenditures to certified suppliers who are not manufacturers towards its DBE/MBE goals. The DBE/MBE credited supplies may not exceed 60 percent of the entire contract goal.

   Certified DBE/MBE firms must perform a commercially useful function on any contract. A certified business is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. Each Administration is responsible for determining whether or not a supplier is performing a commercially useful function. The apparent low bidder will be required to submit documentation indicating participation by certified disadvantaged and/or minority businesses in a contract. The bidder shall submit to the Administration Representative the following information:

a. The name of the employee designated as the bidder's liaison officer for minority affairs;

b. A completed Schedule for Participation of Minority Business Enterprises (Form D-EEO-003), from among those certified by MDOT;

c. A Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004), completed and signed by the prime contractor and the DBE/MBE for each disadvantaged and/or minority business listed in the Schedule for Participation;

d. When a bidder intends to meet the established goals for DBE/MBE participation by use of a joint venture, the bidder must submit a Joint Venture Disclosure Affidavit (Form D-EEO-006), indicating the extent of DBE/MBE participation. The affidavit must be submitted through the bidder by the proposed subcontractors and signed by all parties;

e. When the bidder's proposed DBE/MBE Participation Program does not meet the DBE/MBE contract goals, the bidder will submit information sufficient to demonstrate that a good faith effort has been made to meet these goals and shall request, in writing, a waiver of the goal or a portion of the goal;

f. If the bidder is unable to procure, by subcontract or otherwise, supplies and services equalling the specified contract goals, a written request for a waiver of this requirement must be made. A waiver of a DBE/MBE goal or portion of a goal will be granted upon the determination of good faith efforts by the Administrator.

2. Failure of a Bidder to Furnish Information or Otherwise Participate:

The apparent low bidder's failure to participate in any of these proceedings or failure to furnish information after a written request may result in rejection of the bid and non-award of the contract to the apparent low bidder.

3. The bidder will cooperate with the Administration's Representative in any reviews of the contractor's procedures and practices with respect to certified businesses which the Representative may from time to time conduct.

4. During the life of the contract, all plans to modify the approved DBE/MBE Participation Program will require the written approval of the Administrator. This will include any changes to items of work to be sublet or materials and services obtained which differ from those considered in the original DBE/MBE Participation Program submittal.

B. Use of DBE/MBE Banks

The bidder shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis, DBE/MBE banks.

C. Records and Reports

1. The bidder will keep such records as are required by the Administration to determine compliance with its DBE/MBE utilization obligations. These records will indicate:

   a. The actual DBE/MBE and non-minority contractors, type of work being performed, and actual values or work, services and procurement;

   b. Documentation of all correspondence, contacts, telephone calls, etc., to obtain services of DBe/MBEs on this project;

   c. The progress and efforts made in seeking out DBE/MBEs for work on this project.

2. The bidder will submit reports on a monthly basis of contracts and other business transactions executed with certified businesses with respect to the records referred to in Subparagraph 1.a. above, in such form, manner and content as prescribed by the MDOT. If the bidder is unable to submit reports on time, a request will be made to the Administration's Representative for additional time. Failure by the bidder to report in a timely manner may result in a finding of non-compliance.

3. All such records must be retained for a period of three years following completion of the contract work and will be available for inspection by the U.S. Department of Transportation, the Maryland Department of Transportation, and the Administration awarding the contract.

4. Informaton required to be submitted.

a. For federally assisted contracts, all bidders (not only the apparent successful bidder) shall provide the following information:

1. the age of the bidding firm; and
2. the annual gross receipts of the bidding firm.

b. All bidders (not only the apparent successful bidder) shall provide the following information for each firm quoting or considered as subcontractors:

1. the name of firm; and
2. the address of firm.

c. The appropriate modal administration will contact each of the firms quoting or considered as subcontractors to obtain:

1. the age of the firm; and
2. the annual gross receipts of the firm.

d. Where this information already has been gathered on a firm and is current, it will not be requested.

E. DBE status of any firm is determined from the State certification process administered by MDOT.

D. Administrative Procedures for Enforcement -- Contract Compliance

1. The Administration shall carry out a contract compliance process.

2. If the documents used to determine the status of a DBE contain false, misleading, or misrepresenting information, the matter shall be referred to the MDOT Office of MBE or MDOT Office of General Counsel for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a firm, which for any reason, is either no longer certified or no longer eligible to do business with the State. The contractor shall then promptly submit the contractor's plans for maintaining the appropriate DBE/MBE participation on the project for approval.

OVERALL GOALS
FOR FEDERALLY ASSISTED CONTRACTS

The Maryland Department of Transportation shall establish an Overall Goal for each of the State Highway Administration, the Mass Transit Administration and the Maryland Aviation Administration in accordance with 49 CFR Part 26, Sections 26.45 through 26.51. The Overall Goal for each of these three modal administrations shall be submitted to the appropriate Operating Administration of U.S. DOT by August 1 of each year. The Operating Administration of U.S. DOT for MDOT is the Federal Highway Administration.

In summary, the Federal Regulations clarify the Statutory Goal of 10 percent as an aspirational goal, not a requirement for all recipients of Federal financing. MDOT will set Overall Goals based on its specific programs and market to determine the amount of participation that would result in the absence of discrimination and the effects of past discrimination. The Federal Regulations present three alternate formulas to use for measuring availability of ready, willing and able DBEs in the local market so that the program remains narrowly tailored and strives to create a level playing field.

In developing the Overall Goal, participation of ethnic minority, women and general contractor groups, community organizations and other appropriate organizations shall be included. A notice shall be published of the proposed Overall Goal, informing the public that the proposed Overall Goal and its rationale are available for inspection during normal business hours at the MDOT Office of MBE for 30 days following the notice. The public shall be informed that comments on the goals will be accepted for 45 days from the date of the notice. The notice must be published in general circulation media, available minority focused media and trade association publications.

In order to monitor the DBE participation against the Overall Goals, SHA, MTA and MAA shall rely on the MDOT Financial Management Information System (FMIS) for a continuous accounting of DBE contracts and subcontracts. FMIS provides for the entry of payment data as payments are submitted for each contractor. Contractor payments are processed through FMIS. The submissions for the contractors include the subcontractor information which FMIS has been designed to include. The three modal administration DBE offices have access to the FMIS reporting system in order to monitor payments and maintain a running total of DBE participation, both prime contractor and subcontractor as required by 49 CFR Part 26.

OVERCONCENTRATION

If it is determined that there is an overconcentration of minority firms in a certain type of work so as to unduly burden the opportunities of non-DBE firms in that work, alternate measures must be devised to alleviate the overconcentration. MDOT may consider if contract goals unfairly prevent non-DBE's from competing on subcontracts.

The determination of overconcentration shall be made through assessments of contracting information in the three federally financed modal administrations. Corrective measures as enumerated in 49 CFR Part 26 Paragraph 26.33 are available as are other appropriate measures tailored to specific circumstances at the time of the determination of overconcentration. Other provisions of 49 CFR Part 26 which are not included in this summary continue to apply.

LARGE COST SUPPLY ITEM

For a prime contractor to receive full credit for a major or large cost item being furnished by a DBE/MBE subcontractor as a "furnish and install" item of work, the DBE/MBE firm must:

1. Initiate and negotiate the purchase of large supply items;

2. Be invoiced directly for the cost;

3. Assume complete responsibility and liability for the item; and

4. Provide accounting records detailing how the large cost supply items are handled in the firm as supplies of the firm.

The Department's DBE/MBE Contract Compliance Monitoring Procedures provide the necessary guidance on determining DBE/MBE credit on large supply items. There are several compliance issues which need to be addressed prior to a prime contractor receiving full credit for a DBE/MBE large cost supply item. These issues include:

1. Who was responsible for setting the dollar amount allotted for supplies on the forms detailing subcontracted work?

2. How was the cost of supplies derived? Who negotiated the price?

3. Who is responsible for taking delivery of the materials?

4. Who issues the check to pay for the materials?

5. Who assumes contractual and legal responsibility for the materials?

6. Are the materials properly accounted for in the financial records of the subcontractor and consequently, not in the records of the prime contractor?

The Compliance Officer must provide written notice to the contractors prior to the "notice to proceed" indicating that pertinent financial records shall be subject to audit by the State to document the actual purchase of large cost supply items.

It should be made clear to the prime contractor at the beginning of a contract that obtaining participation through the counting of large cost supply items must comply with the Department's regulations. This also extends to the amount of credit given for the supply items on each contract.

The burden rests on each administration to assess each individual contract prior to the approval of the DBE/MBE package and to monitor the contract closely for compliance. This continuous work is necessary to make sure this program brings real benefits to the minority business community.

Structural Steel

Special considerations regarding structural steel as a large cost supply item are included in an attachment to these regulations. (See Attachment 7)

GOOD FAITH EFFORTS

If for any reason, a bidder or offeror is unable to achieve the contract goal for certified DBE/MBE participation, the bidder or offeror may request in writing a waiver to the goal. The bidder or offeror must justify, with sufficient written documentation, the bidder or offeror's good faith efforts to achieve the contract goal. These provisions are in effect during the life of the contract.

The following is a listing of efforts that can be made and will be considered a part of bidder's good faith efforts to meet the contract goal.

A. Coordinating any pre-bid meetings at which DBE/MBEs could be informed of contracting and subcontracting opportunities.

B. Advertising in general circulation, trade association, and minority focused media concerning the subcontract opportunities.

C. Providing written notice to all certified DBE/MBEs who are certified in work areas and who have capabilities of the contract for which their participation is solicited. This notice should be provided in sufficient time to allow the DBE/MBEs to respond to the written solicitation in accordance with COMAR 21.11.03.09B(2)(b)(ii) providing a minimum of 10 days to respond.

D. Following up initial solicitations of interest by contacting DBE/MBEs to determine if the DBE/MBEs are interested. Detailing the efforts with the names, addresses, dates, and telephone numbers of the certified DBE/MBEs contacted along with a description of the information provided to certified DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed.

E. Selecting portions of the work to be performed by DBE/MBEs in order to increase the likelihood of the DBE/MBE goals being achieved.

F. Providing interested DBE/MBEs with adequate information about the plan specifications and requirements of the contract.

G. Negotiating in good faith with interested DBE/MBEs.

H. A bidder or offeror shall not reject a DBE/MBE as unqualified without sound reasons based on a thorough investigation of DBE/MBE capabilities. For each certified DBE/MBE that is rejected as unqualified or that placed a subcontract quotation or offer that the bidder or offeror considers not to be acceptable, the bidder or offeror shall provide a written detailed statement listing the reasons for this conclusion.

I. Making an effort to assist interested DBE/MBEs in obtaining bonding, lines of credit, or insurance as required by the contractor.

J. Effectively using the services of available minority/women contractors' groups, local, state and Federal minority/women business assistance offices and other organizations to provide assistance in the recruitment and placement of DBE/MBE subcontracts.

As a minimum, if for any reason, the contractor is unable to award subcontracts or procure supplies and services with a value that is equal to the minimum goal established in the solicitation, the contractor will document its "Good Faith Efforts" in writing, with justification to include, but not limited to, the following:

1. A statement detailing the efforts made to contact and negotiate with certified businesses including:

   (a) The names, addresses, dates, and telephone numbers of the certified businesses who were contacted; and

   (b) A copy of the information provided to the certified DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed.

2. A detailed statement listing the items or selected portions of work proposed to be performed by certified businesses in order to increase the likelihood of achieving the stated goal.

3. A statement detailing the reasons for a contractor's conclusion that a certified DBE/MBE subcontractor is not qualified to perform.

4. A list of certified businesses contacted but found to be unavailable. This list should be accompanied by Minority Contractor Unavailability Certificates (Form D-EEO-005) signed by the minority contractor or a statement from the apparent low bidder that the certified businesses refused to sign the Minority Contractor Unavailability Certification.

In making a determination of Good Faith Efforts the agency head or designee may consider engineering estimates, catalogue prices, general market availability and availability of certified DBE/MBEs in the area in which the work is to be performed, other bids or offers and subcontract bids or offers substantiating significant variances between certified DBE/MBE and non-DBE/MBE costs of participation, and their impact on the overall cost of the contract to the State and any other relevant factors. The contractor will not receive a waiver in instances where they can (or want to) perform work with their own forces.

If and when the successful bidder has demonstrated his complete compliance with these procedures and this is thoroughly documented, the Administration Representative will refer the request to the Administrator.

Based on the Administration Representative's evaluation, the Administrator will determine the adequacy of the apparent low bidder's MBE Participation Program. The Administrator will determine if it is in conformance with the MDOT MBE Program.

Unless an objection is filed by the apparent low bidder in writing within fifteen (15) days of the Administrator's determination, the Administrator's determination is final. In the event an objection is filed, the Administrator will send the apparent low bidder a Notice of Opportunity to meet with the Administrator, indicating the date, time, and place. At that time, the Administrator may request additional information from the apparent low bidder.

A copy of the determination will be sent to the apparent low bidder and other interested parties. The apparent low bidder and other interested parties may appeal the Administrator's decision to the Secretary of Transportation.

RACE AND GENDER NEUTRAL ALTERNATIVES

Many activities undertaken by Maryland Department of Transportation (MDOT) in carrying out the spirit of the MBE and DBE Programs are race and gender neutral. The requirements of 49 CFR Part 26 reemphasize the use of race and gender neutral alternatives to race and gender specific actions. As a reference source, a variety of race and gender neutral activities, processes and programs are presented here. This list is not exhaustive of all race and gender neutral alternatives that may exist or be utilized.

49 CFR Part 26, Paragraph 26.51 enumerates the following race and gender neutral options.

1. Competitive Procurement System

A DBE/MBE contractor or proposer receives a contract in a competitive environment without regard to race or gender or wins a subcontract when there is no DBE goal or a subcontract when other subcontracts have fully satisfied the contract goal requirements is race and gender neutral.

Within this system, specific actions that are race and gender neutral include arranging solicitations, stating specific times for presentation of bids and release of specifications, quantities and delivery schedules that facilitate participation in the procurement process.

Other actions include unbundling large contracts, increasing accessibility of contracts to small businesses and encouraging subcontracting by primes beyond the required subcontracting.

2. Bonding and Financing

An agency may assist firms in overcoming limitations which result in the inability to obtain bonding and/or financing by simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help small businesses to obtain bonding and financing.

3. Technical Assistance

Providing a variety of technical assistance to firms, usually in the field of operations, is a race and gender neutral activity.

4. Information

Providing information on specific contract opportunities through a variety of methods such as mailings to bidders, the Internet and the Contract Weekly as well as providing lists of potential subcontractors to prime contractors are considered race and gender neutral.

5. Support Services

Providing support services to develop and improve the short and long term business man gement, record keeping, accounting capability and other general business support is a race and gender neutral activity.

6. Business Development

Providing long term support in business development, increasing opportunities in a variety of work specialties, and/or strengthening the firm's ability to contract for increasingly significant projects and become self sufficient from specific business programs is a race and gender neutral activity.

7. Start-up Support

Provide a program to assist new firms with starting operations, particularly in non-traditional fields of work.

8. Directory

Maintain and ensure a wide distribution of a DBE Directory, in print and electronic format.

9. Technology

Assist DBEs, MBEs and other small firms to develop the capability to utilize existing and newly emerging technology in their business and to conduct business through electronic media.

The Maryland Department of Transportation has a wide range of activities and support programs that are race and gender neutral. Generally, they can be categorized within the nine (9) categories listed above.

1. Competitive Procurement

The State of Maryland has a Competitive Procurement System with a strong review and approval process and a formal appeals process. There are formal bid openings, advertising in known publications as well as in electronic media, release of specifications and all aspects regarding procurement requirements. Methods for evaluation of bids and proposals are disseminated in advance. One publication, The Maryland Contract Weekly, is available for a modest subscription fee and contains all State solicitations.

Contracts are evaluated for unbundling, bid in smaller quantities to encourage smaller firms to bid. Contracts may be bid in alternates, offering the option to the bidders to bid a portion of a bid, such as work in one county, or multiple portions, such as counties, or all portions of a bid.

The State also has a Small Business Preference program to support small business access to state procurements. This is a race and gender neutral program for small firms marketing directly to the State.

2. Bonding and Financing

MDOT has contracted with the Maryland Small Business Development Financing Authority (MSBDFA) Management Group to support Transportation contracts. MSBDFA provides guarantees for bonding and contract financing and it provides bonding and financing on contracts that are generally smaller than the larger bonding firms will handle. The MSBDFA Management Group also has financing for new technology ventures by small businesses.

3. Technical Support and Business Development

MDOT operates a variety of support programs for small and minority businesses.

a. Operation Guaranteed Help provides consulting services to certified DBE/MBE firms on any topic, administrative or operational, at no cost to the business.

b. Mega Success Conferences are business conferences which bring a public sector and private sector opportunities to small and minority businesses, particularly in regions of the State outside the Baltimore-Washington corridor. Included are procurement opportunities, training in bidding, marketing, financing and bonding, construction forums, technology and other pertinent fields.

c. Outreaches are an integral part of providing information to small and minority businesses throughout the State. MDOT hosts and attends dozens of these meetings/events each year. MDOT is active in the MD/DC Minority Supplier Development Council in a leadership and sponsorship role. The Council gives DBE/MBEs the opportunity to develop business relationships and contracts with larger private corporations as well as with each other. This is an opportunity for DBE/MBEs to become independent of race and gender based programs.

d. Training courses are arranged by MDOT, usually taught by MDOT staff to small and minority firms, often early in their business development efforts. The courses are in specific technical areas such as control of traffic, excavation, in administrative areas and regarding certification requirements and processes. These are conducted in workshops arranged by small business associations, sometimes with chambers of commerce and at local community colleges. These have usually been in areas outside the Baltimore-Washington corridor.

The Entrepreneurial Development Institute (EDI) is a MDOT State Highway Administration federally funded assistance program centered at the University of Maryland Eastern Shore (UMES). DBE/MBEs needing training in the areas of writing business plans, management of small businesses, managing human resources, budget and payroll, technical math, planning and scheduling projects, construction estimating and bidding and computer applications can attend. EDI sessions are held no less than twice yearly, each lasting over a period of four weekends. A nominal fee is charged and DBE/MBEs are invited to use local hotel accommodations at very reasonable rates.

4. DBE/MBE Directory

The DBE/MBE Directory is available in printed form, on disc and on the Internet. It is a necessary resource document inside State Government and is widely used outside the State Government by local jurisdictions that rely on State certification conducted by MDOT and by large private corporations which have corporate minority business programs as a part of their corporate activities.

5. Administrative Support

Administrative support actions can eliminate problem areas for small businesses and therefore for many DBE/MBEs. MDOT has had a prompt payment policy in effect for many years. It includes all subcontractors. In its 1999 Session, the Maryland General Assembly passed prompt payment legislation which was signed into law by the Governor in May 1999. This law, which goes into effect October 1, 1999, establishes specific timeframes for payment of all subcontractors and also establishes a series of timeframes to resolve contract issues, billing issues, etc. It extends to the return of retainage as well.

There are programs that are operated in State Government and by other public and private organizations that provide support and/or financing for business in a variety of areas such as biomedical, manufacturing and international trade.

SPECIAL PROVISIONS

AFFIRMATIVE ACTION REQUIREMENTS FOR:

- Straight State Contracts - Attachment 1
- Straight State Supply and Service Contracts - Attachment 2
- Federal-Aid Contracts - Attachment 3
- Federal-Aid Consultant Agreements - Attachment 4

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF MINORITY BUSINESS ENTERPRISES

The "Special Provisions" document is the implementing source of the Department's DBE/MBE Program. This document is contained in all bid specifications having a DBE/MBE Program requirement and is also found in the contract document.

Also, the MDOT has several funding sources which will mandate DBE/MBE Program language peculiar to a specific funding source requirement. Consequently, the MDOT DBE/MBE Program contains four (4) "Special Provisions" documents to be used as appropriate to implement the requirements, depending upon the Federal or state funding requirements.

Copies of the primary documents used in the implementation of the MDOT DBE/MBE Program are included in this manual as attachments.

Contractors bidding on contracts or submitting expressions on interest for State Highway Administration projects are essentially using the same forms; however, the forms have a State Highway Administration number assigned to them.

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF MINORITY BUSINESS ENTERPRISES
FOR STRAIGHT STATE CONTRACTS

A. GENERAL INFORMATION

For the purpose of these requirements, the following terms as defined below shall apply:

ADMINISTRATION -- Any one of the Administrations within the Maryland Department of Transportation (MDOT) to include:Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary.

ADMINISTRATION REPRESENTATIVE -- A DBE/MBE Officer or employee of an Administration who enforces the laws and regulations pertaining to the Minority Business Enterprise Program.

ADMINISTRATOR -- The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for his/her administration.

AFFIRMATIVE ACTIONS -- Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future and to involve minority business enterprises in contracts and programs funded by MDOT.

BUSINESS ENTERPRISE -- Any for-profit legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

CERTIFICATION -- The process by which a business is determined to be a bona fide DBE/MBE.

CERTIFIED BUSINESS -- A business which by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not equate to a pre-qualification status.

CONTRACTOR/SUBCONTRACTOR -- One who participates, through a contract, subcontract, or lease agreement, in any matter covered by this program.

DBE/MBE DIRECTORY -- A compilation of disadvantaged or minority businesses certified by MDOT as bona fide disadvantaged businesses.

DBE/MBE PARTICIPATION PROGRAM (also PLAN) -- The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The DBE/MBE Participation Packet will consist of the MDOT Schedule for Participation (Form D-EEO-003) of DBE/MBEs, the MDOT Minority Contract Project Disclosure and Participation Statement (Form D-EEO-004), the MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006 A & B) and the Minority Contractor Unavailability Certificate (Form D-EEO-005).

JOINT VENTURE -- An association of a DBE/MBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

MBE CONTRACT GOAL -- The amount of a contract to be completed by certified businesses, ie MBEs, for state financed contracts.

MDOT -- Maryland Department of Transportation.

MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE -- The individual designated by the Secretary of the Maryland Department of Transportation responsible for management of the Office of Minority Business Enterprise, the certification process and the policy development of the Minority Business Program.

MINORITY BUSINESS ENTERPRISE (MBE) -- Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent (51%) owned and controlled by one or more minority persons, or a non-profit entity organized to promote the interest of the physically or mentally disabled.

MINORITY BUSINESS ENTERPRISE OFFICER -- The Department employee who provides guidance to an Administration on MBE matters.

MINORITY PERSON -- A member of a socially and economically disadvantaged minority group which for purposes of this section includes African Americans/Blacks, Hispanics, Native Americans (American Indians), Asians, Women, and the physically or mentally disabled.

SMALL BUSINESS -- A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

B. BIDDER'S ACTION

1. A bidder will seek commitments from MDOT certified Minority Business Enterprises (MBE) to subcontract for supplies or services, the combined value of which will equal or exceed the established goal of the contract. A bidder may count toward an MBE contract goal 60 percent of its MBE expenditures for supplies from a certified MBE supplier who is a regular dealer and who performs a commercially useful function in the supply process. A certified business is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved. Each Administration is responsible for determining whether or not a supplier is performing a commercially useful function. The apparent low bidder will be required to submit documentation indicating participation by certified minority businesses in a contract. The bidder shall submit to the Administration Representative the following information:

   a. The name of an employee designated as the bidder's liaison officer for minority business;

   b. A completed Schedule for Participation (Form D-EEO-003) of Minority Business Enterprises, from among those certified by the MDOT;

   c. A Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004) completed and signed by the bidder and each MBE listed in the Schedule for Participation. Any amendments to the Schedule for Participation require the approval of the Administrator;

   d. When a bidder intends to attain the contract goal for certified business participation by use of a joint venture, a Joint Venture Disclosure Affidavit must be submitted (Form D-EEO-006) showing the extent of MBE participation. If a bidder intends to use a joint venture as a subcontractor to meet its contract goal, the affidavit must be submitted through the bidder by the proposed subcontractor and signed by all parties.

2. If, for any reason, the contractor is unable to meet the goals specified in the contract, the contractor will request, in writing, an exception to this requirement with justification to include the following:

   a. A detailed statement of the efforts made to contact and negotiate with MBEs including:

(1) The names, addresses, dates and telephone numbers of MBEs who were contacted; and

(2) A description of the information provided to MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(b) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the contract goal;

(c) For each certified MBE that placed a subcontract quotation of offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion; and

(d) A list of MBEs contacted but found to be unavailable. This should be accompanied by a Minority Contractor Unavailability Certificate (Form D-EEO-005) signed by the MBE owner, or a statement from the apparent low bidder that the MBE owner refused to give written certification.

C. RECORDS AND REPORTS

1. The bidder will keep such records as are required by the Administration to determine compliance with its MBE contract requirements. These records will include:

a. Documentation of all correspondence, contact, telephone calls, e-mail, faxes, etc., to obtain services of certified businesses on this project;

b. For each subcontractor, MBE and non-MBE:

(1) the nature of work being performed and/or materials supplied,
(2) contract amount and terms of performance and/or delivery,
(3) copies of all canceled checks paid to subcontractors and suppliers, and
(4) a record all payments made to subcontractors and suppliers.

c. The progress and efforts being made in seeking out DBE/MBEs for work on this project.

2. At least monthly, the bidder will submit copies of contracts and other business transactions executed with MBEs with respect to the records above, in such form, and content as prescribed by the MDOT. If the bidder cannot submit the report on time, he/she will notify the Administration's Representative and request additional time to submit the report. Failure of the bidder to report in a timely manner may result in a finding of non-compliance.

3. All records must be retained for a period of three years following completion of the contract work and will be available for inspection by the Maryland Department of Transportation and/or the Administration awarding the contract.

4. The bidder shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis, MBE banks.

D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

1. Whenever the Administration believes the bidder or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration Representative will conduct an investigation. If the Administrative Representative finds the bidder or any subcontractor is not in compliance with these provisions, the contractor will be notified in writing of steps which will, in the judgment of the Administration, bring the contractor into compliance. If the contractor fails or refuses to take corrective action, the Administration's Representative will make a final report of non-compliance to the Administrator who may authorize the imposition of one or more of the sanctions listed below, in accordance with COMAR;

   a. Suspension of work on the project, pending correction;

   b. Withholding payment or a percentage thereof, pending correction;

   c. Referral of MBE to MDOT Office of MBE for review for decertification, for review/referral to the Attorney General's Office for review/initiation of debarment or for review for criminal prosecution through the MDOT Office of General Counsel;

d. Initiation of suspension in accordance with COMAR regulations;

e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;

f. Any other action as appropriate.

2. If the documents used to determine the status of a MBE contain false, misleading or misrepresenting information, the matter shall be referred to the MDOT Office of the General Counsel for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a firm, which for any reason, is either no longer certified or no longer eligible to do business in the State. The contractor shall promptly submit plans for maintaining the required MBE participation on the project or appropriate request for waiver of all or part of the contract goal with appropriate documentation to support Good Faith Efforts (as established by COMAR included the MDOT DBE/MBE Program Manual). The program and all revisions require the Administrator's approval.

ATTACHMENT 2

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENT
UTILIZATION OF MINORITY BUSINESS ENTERPRISES
STRAIGHT STATE SUPPLY AND SERVICE CONTRACTS
TITLE 14 - SUBTITLE 3 STATE FINANCE AND PROCUREMENT
ARTICLE, ANNOTATED CODE OF MARYLAND

A. GENERAL INFORMATION

For the purpose of these requirements, the following terms as defined below shall apply:

ADMINISTRATION -- Any one of the Administrations within the Maryland Department of Transportation (MDOT) to include: Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary.

ADMINISTRATION REPRESENTATIVE -- A DBE/MBE Officer or employee of an Administration who enforces the laws and regulations pertaining to the Minority Business Enterprise Program.

ADMINISTRATOR -- The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for his/her administration.

AWARD -- The decision by a procurement agency to appoint or present a purchase agreement or contract to a vendor.

BID -- A statement of price, terms of sale, and description of the supplies, services or construction offered by a vendor to the State.

BIDDER'S APPLICATION -- The appropriate form designed by the procurement agency for use by vendors wishing to do business with the State.

CERTIFIED BUSINESS -- A business which by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not equate to a pre-qualification status.

COMMODITY -- An item of purchase which may include office goods and materials, food, printing, building materials, and other items needed to support normal operations. Commodity differs from "supply" in that commodity does not include insurance.

CONTRACT -- Any agreement entered into by a State agency for the procurement of supplies, services, construction, or any other item and includes:

1. Awards and notices of award;

2. Contracts of a fixed-price, cost-reimbursement, cost-plus-affixed fee, fixed-price incentive, or cost-plus incentive fee type;

3. Contracts providing for the issuance of job or task orders;

4. Leases;

5. Letter contracts;

6. Purchase orders;

7. Supplemental agreements with respect to any of these, and/or

8. Orders.

"Contract" does not include:

1. Collective bargaining agreements with employees organizations, or

2. Medicaid, Medicare, Judicare, or similar reimbursement contracts for which user eligibility and cost are set by law or regulation.

DBE/MBE DIRECTORY -- A compilation of disadvantaged or minority businesses which have been certified by MDOT as bona fide disadvantaged businesses.

DETERMINATION -- The decision made by a public official or employee which shall be in writing and based upon written findings.

EMERGENCY -- A sudden and unexpected occurrence or condition which agency management reasonably could not foresee, posing an actual and immediate threat to the continuance of essential normal operations of a State agency or need to cope with public exigency condition. Any commodity procurement with a value of less than $500 are not considered emergencies regardless of procurement method.

INVITATION FOR QUOTATION -- An invitation for bids.

INVOICE -- A vendor's request for payment for supplies, commodities, services, maintenance, and construction provided, which meets the requirements of Title 15, Subtitle 1 of the State Finance and Procurement Article.

JOINT VENTURE -- An association of a DBE/MBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

MAINTENANCE -- Work necessary to repair, prevent damage, or sustain existing components of a facility, structure or building system (including built-in equipment.) Maintenance includes, but is not limited to, routine and emergency repair work, or replacements, for example, roof repair or replacement, site upkeep, utilities work, paving repair or replacement (bituminous and concrete), elevator maintenance, modification, or inspection, building renovation or minor alterations, fire and safety modifications, energy conservation projects, boiler retubing and repair, mechanical systems renovations such as plumbing and heating, ventilating and air condition (HVAC), interior and exterior painting, high voltage electrical equipment, automatic temperature control system, water treatment (boiler, condenser, chiller), boiler burner maintenance, and fire extinguisher maintenance.

MBE CONTRACT GOAL -- The amount of a contract to be completed by certified businesses, i.e. MBEs, for state financed contracts.

MDOT -- Maryland Department of Transportation.

MINORITY BUSINESS ENTERPRISE (DBE/MBE) -- Any legal entity, other than a joint venture, organized to engage in commercial transactions which is at least 51 percent (51%) owned and controlled by one or more minority persons, or a non-profit entity organized to promote the interest of the physically or mentally disabled.

MINORITY BUSINESS ENTERPRISE OFFICER -- The Department employee who provides guidance to the Administrations on DBE/MBE related matters.

MINORITY PERSON -- A member of a socially and economically disadvantaged minority group which for purposes of this section includes African Americans/Blacks, Hispanics, Native Americans, (American Indians), Asians, Women, and the physically or mentally disabled.

ORAL BIDS -- Bids which are proposed by a means other than by writing.

PROCUREMENT -- Includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.

PROCUREMENT AGENCY -- Any State agency which is authorized by law or regulations to procure or contract.

PROCUREMENT OFFICER -- Any person authorized by a State agency in accordance with law or regulations to formulate, enter into, or administer contracts or make written determinations and findings with respect to them. The term also includes an authorized representative acting within the limits of authority.

PROCURING -- Buying, leasing, purchasing, granting, or otherwise obtaining any supplies, services or construction.

PROPOSAL -- The response by an offeror to a solicitation of the State for a service. The response may include but is not limited to an offeror's price and terms for the proposed contract, a description of technical expertise, work experience, and other information as requested in the solicitation.

PURCHASE ORDER -- A purchaser's document authorizing a procurement from a vendor. Upon acceptance by a vendor, the purchase order becomes a contract.

SERVICES -- The rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance. It includes, but is not limited to, the professional, personal, and/or contractual services provided by architects, engineers, attorneys, accountants, physicians, consultants, appraisers, land surveyors and where the service is associated with the provision of expertise or labor, or both; for example, property management, janitorial, security, waste disposal, pest control, environmental control, trash removal, window cleaning, computer hardware and software, closed circuit television systems, snow removal, energy consultation, office equipment maintenance (typewriter, photocopy machine, calculator, etc.) services. "Services" does not include:

1. The work normally associated with the repair or maintenance, or both of facilities, structures or building systems defined as "maintenance;"

2. Provision of:

   a. Human or social services directly to third party clients, or

   b. Cultural or educational services directly to third party clients or the public when the direct provisions of those services is the primary purpose of any agreement.

SMALL BUSINESS -- A small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

SOLICITATION -- Invitation for bids, request for quotations, request for proposals, or any other method or instrument used to communicate to potential bidders or offerors a State agency's procurement needs.

SUPPLY -- All property, including equipment and leases on equipment, printing and insurance, except any interest in real property.

USING AGENCY -- Any State agency which uses any supplies, services, or construction procured under this title.

VENDOR -- A business desiring to enter into a contract with the State.

VENDOR'S LIST -- A list(s) developed and maintained by a procurement agency which includes businesses that have submitted a business application and/or have requested such listing.

VOUCHER -- A claim for reimbursement of funds resulting from an expenditure related to official State business.

B. BIDDER'S ACTION

1. Contract Award

   a. Determination of MBE Bidder Responsibility for Straight State Supply and Service Contracts -- Direct Procurement from MBE

      Each firm desiring to furnish supplies or to perform a service in accordance with these special provisions, and who desires to be recognized as a bona fide MBE, must be certified as such by MDOT.

b. Determination by Administrator -- Subcontracting to MBEs

(1) Based on the Administration Representative's evaluation and approval of a proposed MBE goal for a contract, the contract may be awarded to the successful bidder in accordance with this special procedure.

(2) The apparent low responsive and responsible bidder will provide the Administration MBE Officer with the following items:

(a) A complete MDOT Schedule of Participation of Minority Business Enterprises (Form D-EEO-003);

(b) MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004);

(3) Waiver -- If, for any reason, a bidder or offeror is unable to achieve the established MBE goal, the bidder or offeror may request in writing, waiver of the goal with justification according to the procedures in this manual.

c. Documentation -- The documents listed below will be considered a part of any contract and shall be furnished by the apparent low bidder or successful offeror to the Administration MBE Officer within ten (10) working days from notification that he/she is the apparent low bidder or successful offeror or within ten (10) working days following the award, whichever is earlier.

(1) A completed Schedule of Participation (Form D-EEO-003) naming each MBE who will participate in the project;

(2) A completed Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004);

(3) A written request for a waiver, if appropriate.

If the contract has been awarded and the documents have not been furnished within the prescribed time, the award may be voided by the Administrator.

2. Request for Waiver of MBE Goal

a. If, for any reason, the contractor is unable to meet the goals specified in the contract, the contractor will request, in writing, an exception to this requirement with justification to include the following:

(1) A detailed statement of the efforts made to contact and negotiate with MBEs including:

(a) The names, addresses, dates and telephone numbers of MBEs who were contacted; and

(b) A description of the information provided to MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by MBEs in order to increase the likelihood of achieving the contract goal;

(3) For each certified MBE that placed a subcontract quotation or offer that the apparent successful bidder or offeror considers not to be acceptable, a detailed statement of the reasons for this conclusion;

(4) A list of each MBEs contacted but found to be unavailable. This should be accompanied by a Minority Contractor Unavailability Certificate (Form D-EEO-005) signed by the MBE owner, or a statement from the apparent low bidder that the MBE owner refused to give written certification.

b. A requested waiver of the MBE goal will be granted by the Administrator upon the determination of good faith efforts were made, but that no qualified MBE is available to participate in the contract. The Administrations have the sole responsibility for approval or denial of waiver requests and are responsible for maintaining detailed documentation of a contractor's "good faith efforts" to achieve the MBE goals. Administrations will provide a quarterly report of waiver requests to the Office of Minority Business Enterprise by the 15th of each month following the end of the quarter.

3. Failure of Apparent Low Bidder to Furnish Information or Otherwise Participate.

The low bidder's failure to participate in any of these proceedings or failure to furnish information after written request may result in rejection of the bid or the contract not being awarded.

4. Use of DBE/MBE Banks

The bidder shall consider, whenever possible, utilizing the services of minority-owned banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis, MBE banks.

5. Amendment for Unforeseen Circumstances

If at any time before award, an apparent low bidder believes or has reason to believe that a MBE listed on its MDOT Schedule of Participation of MBEs is unable to perform or has become unqualified or unavailable, the low bidder will immediately notify the Administration's Representative. Within five (5) days, the apparent low bidder must make every reasonable effort to amend their MBE Participation Program if this is necessary to achieve the contract goal for MBE participation. Any amendments to the MBE Participation Program require the approval of the Administrator. Failure to make such efforts may result in a determination that the apparent bidder is not eligible for award of the contract.

C. RECORDS AND REPORTS

1. The bidder will keep such records as are required by the Administration to determine compliance with its MBE contract requirements. These records will include:

   a. Documentation of all correspondence, contacts, telephone calls, e-mail, faxes, etc., to obtain services of certified businesses on this project;

b. For each subcontractor, minority and non-minority:

(1) the nature of work being performed and/or materials supplied,
(2) contract amount and terms of performance and/or delivery,
(3) copies of all canceled checks to subcontractors and suppliers, and
(4) a record of all payments made to subcontractors and suppliers

c. The progress and efforts being made in seeking out MBEs for work on this project.

2. At least monthly, the bidder will submit copies of contracts and other business transactions executed with MBEs with respect to the records referred to above, in such form, and content as prescribed by the MDOT. If the bidder cannot submit the report on time, he/she will notify the Administration's Representative and request additional time to submit the report. Failure of the bidder to report in a timely manner may result in a finding of non-compliance.

3. All such records must be retained for a period of three years following completion of the contract work and will be available for inspection by MDOT and/or the Administration awarding the contract.

D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

1. Whenever the Administration believes the bidder or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration's Representative will conduct an investigation. If the Administration's Representative finds that the bidder or any subcontractor is not in compliance with these provisions, the contractor will be notified in writing of steps which will, in the judgment of the Administration, bring the contractor into compliance. If the contractor fails or refuses to take corrective action, the Administration's Representative will make a final report of non-compliance to the Administrator who may authorize the imposition of one or more of the sanctions listed below, in accordance with COMAR:

a. Suspension of work on the project, pending correction;

b. Withholding payment or a percentage thereof, pending correction;

c. Referral of MBEs to MDOT Office of MBE for review for decertification and/or for review/referral to the Attorney General's Office for review/initiation of debarment or for review for criminal prosecution through the MDOT Office of the General Counsel;

d. Initiation of suspension in accordance with COMAR regulations;

e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;

f. Any other action as appropriate.

2. If the documents used to determine the status of a certified business contain false, misleading or misrepresenting information, the matter shall be referred to the MDOT Office of General Counsel for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a firm, which for any reason, is either no longer certified or no longer eligible to do business in the State. The contractor shall promptly submit plans for maintaining the appropriate MBE participation on the project. The program and all revisions require the Administrator's approval.

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF DISADVANTAGED AND MINORITY BUSINESS ENTERPRISES
FEDERAL-AID CONTRACTS

A. GENERAL INFORMATION

For the purpose of these requirements, the following terms as defined below shall apply:

ADMINISTRATION -- Any one of the Administrations within the Maryland Department of Transportation (MDOT) to include: Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary.

ADMINISTRATION REPRESENTATIVE -- A DBE/MBE Officer or employee of an Administration who enforces laws and regulations pertaining to the Disadvantaged and Minority Business Enterprise Program.

ADMINISTRATOR -- The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for his/her administration.

AFFIRMATIVE ACTIONS -- Specific steps taken to eliminate discrimination and its effects, to ensure nondiscriminatory results and practices in the future, and to involve disadvantaged and minority business enterprises fully in contracts and programs funded by MDOT.

BUSINESS ENTERPRISE -- Any for-profit legal entity which is organized in any form other than as a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

CERTIFICATION -- The process by which a business is determined to be a bona fide DBE/MBE.

CERTIFIED BUSINESS -- A business which, by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not equate to a pre-qualification status.

CONTRACTOR/SUBCONTRACTOR -- One who participates, through a contract, subcontract, or lease agreement, in any matter covered by this program.

DBE/MBE CONTRACT GOALS -- The amount of a contract to be completed by certified businesses, i.e. DBEs, for federally financed contracts.

DBE/MBE DIRECTORY -- A compilation of disadvantaged or minority businesses which have been certified by MDOT as DBE/MBEs.

DBE/MBE PARTICIPATION PROGRAM (also PLAN) -- The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The Disadvantaged/Minority Participation Program will consist of the MDOT Schedule for Participation of DBE/MBEs (Form D-EEO-003), the MDOT Minority Contract Project Disclosure and Participation Statement (Form D-EEO-004), the MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) and the Minority Contractor Unavailability Certificate (Form D-EEO-005).

DBE/MBE - DISADVANTAGED BUSINESS ENTERPRISE -- (Reference 49 CFR, Part 26, Subpart A) a small business concern: (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Where stock ownership is involved, the disadvantaged owner(s) must own at least 51 percent of each class of voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership.

FEDERAL-AID CONTRACT -- Any contract awarded to any contractor by the Maryland Department of Transportation, whose funds are derived in whole or in part from the U.S. DOT. This also includes consultant agreements, modification of contracts, and leases.

JOINT VENTURE -- An association of a DBE/MBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

MDOT -- Maryland Department of Transportation.

MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE -- The individual designated by the Secretary of the Maryland Department of Transportation, responsible for management of the Office of Minority Business Enterprise, the certification process and the policy development of the Disadvantaged/Minority Business Program.

SMALL BUSINESS -- A firm as defined pursuant to Section 8(a) of the Small Business Act and which does not exceed the maximum employee work force total or three year average annual receipts, in accordance with the U.S. Small Business Administration size standards.

SMALL BUSINESS ADMINISTRATION (SBA) -- An agency of the federal government responsible for certifying a firm as a Section 8(a) firm.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL PURSUANT TO 49 CFR, PART 26 -- Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

A. found by the MDOT to be socially and economically disadvantaged on a case-by-case basis;

B. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women;

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

Only those persons whose personal net worth does not exceed $750,000 may be found to be economically disadvantaged.

U.S. DOT -- U.S. Department of Transportation.

B. BIDDER'S ACTION

1. A bidder will seek certified DBE/MBEs for subcontracting for supplies and/or services, the combined value of which should equal or exceed the established goal of the contract. A bidder may count toward a DBE/MBE contract goal 60 percent of its DBE/MBE expenditures for supplies from a DBE/MBE supplier who is a regular dealer and who performs a commercially useful function in the supply process. The apparent low bidder will be required to submit documentation indicating participation by certified disadvantaged businesses in a contract. The apparent low bidder shall submit to the Administration Representative the following information:

   a. The name of an employee designated as the bidder's liaison officer for minority affairs;

   b. A completed Schedule for Participation of Disadvantaged/Minority Business Enterprises (Form D-EEO-003), from among those whose names appear in the MDOT DBE/MBE Directory or who are otherwise certified by MDOT as being disadvantaged business enterprises;

   c. A Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004), completed and signed by the prime contractor and the disadvantaged business enterprise for each business listed in the Schedule for Participation. This Statement and any amendments to the Participation Statement require the approval of the Administration;

   d. Where a bidder intends to achieve the contract goal for DBE/MBE participation by use of a joint venture, the bidder must submit a Joint Venture Disclosure Affidavit (Form D-EEO-006), showing the extent of DBE/MBE participation. If a bidder intends to use a joint venture as a subcontractor to meet its goal, the affidavit must be submitted through the bidder by the proposed subcontractors and signed by all parties;

e. Where the DBE/MBE Participation Program proposed does not meet the DBE contract goals, the bidder shall submit information sufficient to demonstrate that he/she has made good faith efforts to meet these goals. (See Good Faith Effort elsewhere in the MDOT DBE/MBE Manual)

2. A DBE/MBE bidder has the same DBE/MBE requirements as a non-DBE/MBE bidder. (See 49 CFR §26.55).

3. Determination of Bidder Responsibility for Federal-Aid Contracts:
If the bidder is unable to procure supplies and services equalling the specified contract goals, he/she shall request a waiver of the requirement in writing. A waiver of the DBE/MBE goal will be granted upon the determination of the bidder's good faith effort by the Administrator.

4. Failure of a Bidder to Furnish Information or Otherwise Participate: The apparent low bidder's failure to participate in any of these proceedings or failure to furnish information after written request may result in rejection of the bid and non-award of the contract to the apparent low bidder.

5. The bidder will cooperate with the Administration Representative in any reviews of the contractor's procedures and practices with respect to certified businesses which the Representative may from time to time conduct.

6. During the life of the contract, all plans to modify the approved DBE/MBE Participation Program will require the approval of the Administration. This will include all changes including items of work to be sublet or material and services obtained which differ from those considered in the original DBE/MBE Participation Program submittal.

7. Contract Award

a. Determination of DBE/MBE Bidder Responsibility for Federal-Aid Contracts -- Direct Procurement from DBE/MBE

Each firm desiring to furnish supplies or to perform a service in accordance with these special provisions, and who desires to be recognized as a bona fide DBE/MBE, must be certified as such by MDOT.

b. Determination by Administrator -- Subcontracting to DBE/MBEs

(1) Based on the Administration Representative's evaluation and approval of a proposed DBE/MBE goal for a contract, the contract may be awarded to the successful bidder in accordance with this special procedure.

(2) The apparent low responsive and responsible bidder will provide the Administration MBE Officer with the following items:

(a) A complete MDOT Schedule of Participation of Minority Business Enterprises (Form D-EEO-003);

(b) MDOT Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004);

(3) Waiver -- If, for any reason, a bidder or offeror is unable to achieve the established DBE/MBE goal, the bidder or offeror may request in writing, waiver of the goal with justification according to the procedures in this manual.

c. Documentation -- The documents listed below will be considered a part of any contract and shall be furnished by the apparent low bidder or successful offeror to the Administration MBE Officer within ten (10) working days from notification that it is the apparent low bidder or successful offeror or within ten (10) working days following the award, whichever is earlier.

(1) A completed Schedule of Participation (Form D-EEO-003) naming each DBE/MBE who will participate in the project;

(2) A completed Minority Contractor Project Disclosure and Participation Statement (Form D-EEO-004);

(3) A written request for a waiver, if appropriate.

If the contract has been awarded and the documents have not been furnished within the prescribed time, the award may be voided by the Administrator.

8. Request for Waiver of DBE/MBE Goal

a. If, for any reason, the contractor is unable to meet the goals specified in the contract, the contractor will request, in writing, an exception to this requirement with justification to include the following:

(1) A detailed statement of the efforts made to contact and negotiate with DBE/MBEs including:

(a) The names, addresses, dates and telephone numbers of DBE/MBEs who were contacted; and

(b) A description of the information provided to DBE/MBEs regarding the plans, specifications, and anticipated time schedule for portions of the work to be performed;

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBE/MBEs in order to increase the likelihood of achieving the contract goal.

9. Amendment for Unforeseen Circumstances

If at any time before award, an apparent low bidder believes or has reason to believe that a DBE/MBE listed on its MDOT Schedule of Participation of DBE/MBEs is unable to perform or has become unqualified or unavailable, the low bidder will immediately notify the Administration's Representative. Within five (5) days, the apparent low bidder must make every reasonable effort to amend their DBE/MBE Participation Program if this is necessary to achieve the contract goal for DBE/MBE participation. Any amendments to the DBE/MBE Participation Program require the approval of the Administrator. Failure to make such efforts may result in a determination that the apparent bidder is not eligible for award of the contract.

10. Use of DBE/MBE Banks

The bidder shall consider, whenever possible, utilizing the services of DBE/MBE banks. Most DBE/MBE banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis, DBE/MBE banks.

C. RECORDS AND REPORTS

1. The bidder shall keep such records as are required by the Administration to determine compliance with its DBE/MBE contract requirements. These records to be kept by the bidder will include:

   a. Documentation of all correspondence, contacts, telephone calls, e-mail, faxes, etc. to obtain services of DBE/MBEs on this project;

   b. For each subcontractor, DBE/MBE and non-DBE/MBE:

      (1) the nature of working being performed and/or materials supplied,
      (2) contract amount and terms of performance and/or delivery,
      (3) copies of all canceled checks to subcontractors and suppliers, and
      (4) a record of all payments made to subcontractors and suppliers.

   c. The progress and efforts being made in seeking out DBE/MBEs for work on this project;

   d. Other information on firms bidding or being considered for subcontracting in accordance with 49 CFR Part 26, detailed elsewhere in this Manual.

2. At least monthly, the bidder shall submit reports of contracts and other business transactions executed with DBE/MBEs with respect to the records referred to above, in such form, manner and content as prescribed by the MDOT. If the bidder cannot submit its report on time, it will notify the Administration's Representative and request additional time to submit the report. Failure of the bidder to report in a timely manner may result in a finding of non-compliance.

3. All such records must be retained for a period of three years following completion of the contract work and shall be available for inspection by the U.S. Department of Transportation, Maryland Department of Transportation and the Administration awarding the contract.

D. ADMINISTRATIVE PROCEDURES FOR ENFORCEMENT

1. Whenever the Administration believes the bidder or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration's Representative will conduct an investigation. If the Administration's Representative finds the bidder or any subcontractor is not in compliance with these provisions, the contractor will be notified in writing of steps which will, in the judgment of the Administration, bring the contractor into compliance. If the contractor fails or refuses to take corrective action, the Administration's Representative will make a final report of non-compliance to the Administrator who may authorize the imposition of one or more of the sanctions listed below, in accordance with COMAR or 49 CFR Part 26:

   a. Suspension of work on a project, pending correction;

   b. Withholding payment or a percentage thereof, pending correction;

   c. Referral of DBE/MBEs to MDOT Office of MBE for review for decertification and/or review/referral to the Attorney General's Office for review/initiation of debarment or for review for criminal prosecution through the MDOT Office of General Counsel;

   d. Initiation of suspension in accordance with COMAR regulations;

   e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;

   f. Any other action as appropriate.

2. If the documents used to determine the status of a DBE/MBE contain false, misleading or misrepresenting information, the matter may be referred by the MDOT Office of General Counsel for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a firm which, for any reason, is either no longer certified or no longer eligible to do business in the State. The program and all revisions require the Administrator's approval.

SPECIAL PROVISIONS
AFFIRMATIVE ACTION REQUIREMENTS
UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES
FEDERAL-AID CONSULTANT AGREEMENTS

A. GENERAL INFORMATION

For the purposes of these special provisions, the following terms as defined, shall apply:

ADMINISTRATION -- Any one of the Administrations within the Maryland Department of Transportation (MDOT) to include: Maryland Aviation Administration, Maryland State Highway Administration, Maryland Port Administration, Mass Transit Administration, Motor Vehicle Administration, Maryland Transportation Authority and the Office of the Secretary.

ADMINISTRATION REPRESENTATIVE -- A DBE/MBE Officer or employee of an Administration who enforces laws and regulations pertaining to the Disadvantaged and Minority Business Enterprise Program.

ADMINISTRATOR -- The chief executive of an Administration who is charged with the implementation of the DBE/MBE Program for his/her administration.

AFFIRMATIVE ACTIONS -- Specific steps taken to eliminate discrimination and its efforts, to ensure nondiscriminatory results and practices in the future and to involve disadvantaged and minority business enterprises in contracts and programs.

BUSINESS ENTERPRISE -- Any for-profit legal entity which is organized in any form other than a joint venture (e.g., sole proprietorship, partnership, corporation, etc.) to engage in lawful commercial transactions.

CERTIFICATION -- The process by which an applicant is determined to be a bona fide DBE/MBE.

CERTIFIED BUSINESS -- A business which, by order of the Chair/MBEAC or his/her designee, has been certified as a bona fide DBE/MBE. MDOT certification does not to equate to a pre-qualification status.

CONTRACTOR/SUBCONTRACTOR -- One who participates, through a contract, subcontract or lease agreement, in any matter covered by this Program. For the purposes of the MDOT DBE/MBE Program, a consultant will be defined as a contractor/subcontractor.

DBE/MBE CONTRACT GOALS -- The amount of a contract to be completed by certified businesses, i.e. DBEs, for federally financed contracts.

DBE/MBE - DISADVANTAGED BUSINESS ENTERPRISE -- (Reference 49 CFR, Part 26, Subpart A) a small business concern: (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals. Where stock ownership is involved, the disadvantaged owner(s) must own at least 51 percent of each class of voting stock and at least 51 percent of the aggregate of all classes of stock that have been issued (also applies to publicly owned businesses); and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who have ownership.

DBE/MBE DIRECTORY -- A compilation of disadvantaged and minority businesses which have been certified by MDOT as DBE/MBEs.

DBE/MBE PARTICIPATION PROGRAM (also PLAN) -- The documents submitted by the bidder or proposer pursuant to the appropriate special bid provisions. The Minority Participation Program will consist of the MDOT Schedule for Participation of DBE/MBEs (Form D-EEO-003), the MDOT Minority Contract Project Disclosure and Participation Statement (Form D-EEO-004), and the MDOT Joint Venture Disclosure Affidavit (Form D-EEO-006) and the Minority Contractor Unavailability Certificate (Form D-EEO-005).

FEDERAL-AID CONTRACT -- Any contract awarded to any contractor by the Maryland Department of Transportation, whose funds are derived in whole or in part from the U.S. DOT. This also includes consultant agreements, modification of contracts and leases.

JOINT VENTURE -- An association of a DBE/MBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE/MBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

MDOT -- Maryland Department of Transportation.

MDOT DIRECTOR, OFFICE OF MINORITY BUSINESS ENTERPRISE -- The individual designated by the Secretary of the Maryland Department of Transportation, responsible for management of the Office of Minority Business Enterprise, the certification process and the policy development of the Disadvantaged/Minority Business Program.

PROPOSER -- One who submits an expression of interest or a proposal in response to a Request for Proposal (RFP).

REDUCED CANDIDATES LIST -- A list of businesses from which technical and price proposals are requested, established by the Administration's Consultant Screening Committee, through screening and evaluation of candidate firms, pursuant to MDOT Consultant Selection Guidelines.

SMALL BUSINESS -- A firm as defined pursuant to Section 8(a) of the Small Business Act and which does not exceed the maximum employee work force total or three year average annual receipts in accordance with the U.S. Small Business Administration size standards.

SMALL BUSINESS ADMINISTRATION (SBA) -- An agency of the federal government responsible for certifying a firm as a Section 8(a) firm.

SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL PURSUANT TO 49 CFR, PART 26 -- Those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

A. found by the MDOT to be socially and economically disadvantaged on a case-by-case basis;

B. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

1. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

2. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

3. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

4. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos,

Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

5. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

6. Women;

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

Only those persons whose personal net worth does not exceed $750,000 may be found to be economically disadvantaged.

U.S. DOT -- U.S. Department of Transportation.

B. DBE/MBE PARTICIPATION PROGRAM PROPOSALS

1. Administration Action - Project Goals

The goals for each project shall be as set forth in the Legal Notice soliciting Expressions of Interest from consultants.

2. Proposer's Action - Expression of Interest

The proposer will seek commitments from DBE/MBEs by subcontract(s), the combined value of which equals or exceeds the goals established for a specific project. Proposers submitting an expression of interest shall also submit to the Administration a completed DBE/MBE Schedule for Utilization - Consultant Expression of Interest (Form D-EEO-003A).

a. Proposers are to use DBE/MBEs certified by MDOT. Furthermore, proposers are advised that if they are selected to submit technical and price proposals for a project, all DBE/MBEs included in their DBE/MBE Participation Program must have attained certification prior to the due date for proposals to be acceptable for the goal attainment. The inclusion in proposals of DBE/MBEs who are not certified will result in an Administration rejecting the proposal.

b. A proposer may attain the appropriate goals for DBE/MBE participation by use of a joint venture as a subcontractor, but must show the extent of DBE/MBE participation in the joint venture.

c. A DBE/MBE proposer has the same DBE/MBE requirements as a non-DBE/MBE proposer. (See 49 CFR §26.55).

d. Proposers who submit expressions of interest must clearly set forth the DBE/MBE subcontractors (firms) proposed for goal attainment indicating the proposed work, percentage of total work and MDOT certification number for each DBE/MBE. Said information shall be shown in either the letter portion of the expression of interest or Item 6 of the U.S. Government SF 255 form.

3. Administration Action - Expression of Interest

a. The Administration Representative shall review the proposer's program for DBE/MBE participation to ascertain conformance with the contract goal.

b. Expressions of interest will be evaluated in accordance with MDOT Consultant Selection Guidelines.

c. The Consultant Screening Committee will derive a Reduced Candidate List from among those proposers who have been selected as eligible for placement thereon.

4. Proposers Action - Certification Requirements for DBE/MBEs

All DBE/MBEs included in the proposer's DBE/MBE Participation Program must have MDOT certification prior to the submittal date of the proposal in order to be acceptable toward the goal attainment.

5. Proposers Action - In Response to Request for Technical and Price Proposals

a. The proposer who has been asked to submit technical and price proposals will be required to submit, in a separate sealed envelope, at the same time, a DBE/MBE Participation Program.

b. If the proposer does not meet the DBE/MBE goals, price alone will not be an acceptable basis for which the proposer may reject a DBE/MBE submittal unless the proposer can show to the satisfaction of the Administrator that no reasonable price can be obtained from a DBE/MBE.

c. Failure of the proposer or the proposer's subcontractor to provide information may result in the disqualification of the proposer.

6. Administration Action - Proposals

a. The Administration's Representative will review the DBE/MBE Participation Program.

(1) The Administration's Representative will evaluate the proposers' program for attainment of contract goal, and the documentation of good faith efforts when contract goals are not attained.

(2) The Administration's Representative will advise the Consultant Screening Committee, as to which of the proposers have acceptable DBE/MBE Participation Programs. The Consultant Screening Committee will give consideration to the technical and price proposals from only those proposers determined to have submitted acceptable DBE/MBE Participation Programs in accordance with these Special Provisions. The Plan and any amendments to the Program require the approval of the Administration.

b. Upon receipt of the DBE/MBE Participation Program and its evaluation by the Administrative Representative, the Consultant Screening Committee may proceed with the selection process consistent with the MDOT Consultant Selection Guidelines.

C. CONTRACTS - DBE/MBE PROVISIONS

The information contained in this section shall be included in all consultant contracts. All references to the contractor shall be interpreted to mean the consultant.

1. Contract Goals

The setting of a goal on a contract shall include a statement such as: For the purposes of this contract a goal of ____ percent has been established for DBE/MBEs.

2. Substitution of DBE/MBE Subcontractors

Substitution or modification of the contractor's DBE/MBE Participation Program can only be accomplished with the approval of the Administration.

3. Use of DBE/MBE Banks

Contractors shall consider, whenever possible, utilizing the services of DBE/MBE banks. Most minority banks are full-service corporations that can provide an array of financial services such as Treasury and Tax Loan Fund Accounts, Time and Demand Deposit Accounts, Payroll Services, and if needed, organization investment counseling. It is the policy of MDOT to encourage its contractors to utilize, on a continuing basis, DBE/MBE banks.

D. DBE/MBE RECORDS AND REPORTS

1. The contractor will keep such records as are necessary to determine compliance with its disadvantaged and/or minority business enterprise utilization obligations. These records, to be kept by the contractor will indicate:

   a. Documentation of all correspondence, contacts, telephone calls, e-mail, faxes, etc., to obtain services of DBE/MBEs on this project;

   b. For each subcontractor, DBE/MBE and non-DBE/MBE:

      (1) the nature of work being performed and/or materials supplied,
      (2) contract amount and terms of performance and/or delivery,
      (3) copies of all canceled checks to subcontractors and suppliers, and
      (4) a record of all payments made to subcontractors and suppliers.

   c. The progress and efforts being made in seeking out DBE/MBEs for work on this project.

   d. Other information on firms bidding or being considered for subcontracting in accordance with 49 CFR Part 26, detailed elsewhere in this Manual.

2. At least monthly, the contractor will submit reports of contracts and other business transactions executed with DBE/MBEs with respect to the records referred to above, in such form and content as prescribed by the Administration Representative. These reports will be submitted within the first week of each reporting month. If the contractor cannot submit his report on time, he will notify the Representative and request additional time to submit the report. Failure of the contractor to report in a timely manner may result in a finding of non-compliance.

3. All such records must be retained for a period of three years following completion of the contract work and will be available for inspection by the U.S. Department of Transportation, the Maryland Department of Transportation and the Administration awarding the contract.

E. ADMINISTRATIVE PROCEDURES FOR DBE/MBE ENFORCEMENT

1. The contractor will cooperate with the Administration's Representative in any post award reviews of the contractor's procedures and practices with respect to DBE/MBEs which the Administration's Representative may from time to time conduct.

2. Whenever the Administration believes the contractor or any subcontractor may not be operating in compliance with the terms of these provisions, the Administration's Representative will conduct an investigation. If the Representative finds the proposer or any subcontractor not in compliance with these provisions, he/she will notify such contractors in writing of steps which will, in the judgment of the Administration, bring the contractor into compliance. If the contractor fails or refuses to take corrective action, the Administration's Representative will make a final report of non-compliance to the Administrator who may authorize the imposition of one or more of the sanctions listed below in accordance with COMAR:

   a. Suspension of work on the project, pending correction;

   b. Withholding payment or a percentage thereof;

   c. Referral of DBE/MBE to MDOT Office of MBE for review for decertification and/or review/referral to the Attorney General's Office for review/initiation of debarment or for review for criminal prosecution through the MDOT Office of General Counsel;

   d. Initiation of suspension in accordance with COMAR regulations;

e. Referral to the Attorney General's Office for review for debarment or for criminal prosecution through the MDOT Office of General Counsel;

f. Any other action as appropriate.

3. If the documents used to determine the status of a DBE/MBE contain false, misleading or misrepresenting information, the matter may be referred to the MDOT Office of General Counsel for appropriate action. In addition, when directed by the Administrator, the contractor will terminate, without liability to the Administration, its contract with a firm which, for any reason, is either no longer certified or no longer eligible to do business in the State.

STATE FINANCE AND PROCUREMENT ARTICLE §14-308
OF THE ANNOTATED CODE OF MARYLAND
CURRENT THROUGH 1998 CUMULATIVE SUPPLEMENT

§14-308. Prohibited acts; penalties.

(a) **Felony Offenses.**

(1) A person may not:

(i) fraudulently obtain, hold, or attempt to obtain or hold certification;

(ii) aid another person in performing an act prohibited under item (i) of this paragraph;

(iii) willfully obstruct, impede, or attempt to obstruct or impede a State official or employee investigating the qualifications of a business entity that has requested certification;

(iv) fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this subtitle; or

(v) in any minority business enterprise matter administered under this subtitle;

1. willfully falsify, conceal, or cover up a material fact by any scheme or device;

2. make a false or fraudulent statement or representation; or

3. use of false writing or document that the person knows to contain a false or fraudulent statement or entry.

(2) A person who violates any provision of this subsection is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 5 years or both.

(b) **Misdemeanor Offenses.**

(1) A person may not make a false statement about whether an entity has certification.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $2,500 or imprisonment not exceeding 1 year or both. (SF § 11-148; 1988, ch. 48, § 2; 1989, ch. 423, § 2; 1995, ch. 116).

ATTACHMENT 6

MDOT MBE PROGRAM PERSONNEL DETAIL

49 CFR, Part 26, Section 23.45(b) requires "The designation of liaison officer as well as such support staff as may be necessary and proper to administer the Program and a description of the authority, responsibility, and duties of the liaison officer and support staff." Pursuant to the above, the MDOT DBE/MBE Program Personnel detail, as of May 1999, is as follows:

The Office of the Secretary

Director, Office of Minority Business Enterprise

The incumbent in this position, designated by the Maryland Secretary of Transportation, is responsible for executing the MDOT policy concerning the DBE/MBE Program and serves as Chairperson/MBEAC.

Personnel assigned to execute the MDOT DBE/MBE Program as of January 1999 include:

A. MDOT Headquarters

POSITION	
Director, Office of Minority Business Enterprise	(1)
Deputy Director, Office of Minority Business Enterprise	(1)
Assistant Director, Office of Minority Business Enterprise	(1)
Assistant to Assistant Director, Office of Minority Business Enterprise	(1)
Assistant Manager, Office of Minority Business Enterprise	(1)

Manager, Certification Unit	(1)
DBE/MBE Certification Agent	(6)
Manager, Recertification Unit	(1)
DBE/MBE Recertification Agent	(4)
Manager, Administrative Unit	(1)
Office Support Staff	(3)

B. Maryland Aviation Administration MBE Representative

The incumbent in this position reports to the Maryland Aviation Administrator on all DBE/MBE Program matters and performs all duties and responsibilities as outlined in this DBE/MBE Program. Approximately 45 percent of the incumbent's time is allocated to DBE/MBE Program matters. He/she supervises a staff which includes the following:

POSITION	
Equal Opportunity Officer	(1)
Contract Compliance Officer	(2)
Office Secretary	

C. Maryland Port Administration MBE Representative

The incumbent in this position reports to the Maryland Port Administrator on all MDOT MBE Program matters and performs all duties and responsibilities as outlined in the MDOT MBE Program. Approximately 25 percent of the incumbent's time is spent on MDOT MBE Program matters and supervising a staff which includes the following:

POSITION	
Equal Opportunity Officer	(1)
Office Secretary/Intake Officer	(1)

D. Mass Transit Administration MBE Representative

The incumbent in this position reports to the Manager, Equal Opportunity Office, who reports to the Mass Transit Administrator on all MDOT DBE/MBE Program matters and performs all duties and responsibilities as outlined in the MDOT DBE/MBE Program. Approximately 25 percent of the incumbent's time is spent on MDOT DBE/MBE Program matters and supervising a staff which includes the following:

POSITION	
Equal Opportunity Administrator	(1)
Equal Opportunity Officer	(1)
Equal Opportunity Specialist (Contractual)	(1)
Administrative Assistant II	(1)

E. Motor Vehicle Administration MBE Representative

The incumbent in this position (Manager, EO Office) reports to the Motor Vehicle Administrator on all MDOT MBE Program matters and performs all duties and responsibilities as outlined in the MDOT MBE Program. Approximately 5 percent of the incumbent's time is spent on MDOT MBE Program matters. The incumbent supervises an Administrative Specialist position.

F. Maryland Transportation Authority (Toll Facilities) MBE Representative

The incumbent in this position reports to the Administrator of the Maryland Transportation Authority on all MDOT MBE Program matters and performs all duties and responsibilities as outlined in the MDOT MBE Program. Approximately 35 percent of the incumbent's time is spent on MDOT MBE Program matters.

POSITION	
Director, Office of Fair Practices	(1)
Equal Opportunity Officer	(1)
Chief, MBE	(1)
MBE Compliance Officer	(1)
Coordinator for Diversity	(1)
Office Secretary	(1)

G. Maryland State Highway Administration DBE/MBE Representative

The incumbent in this position reports directly to the SHA Administrator, and is responsible for all MBE/EO operations within the agency and performs all duties and responsibilities as outlined in the DBE/MBE Program. DBE/MBE contract compliance reviews are performed by Equal Opportunity personnel in the MSHA District Offices and by the DBE/MBE liaisons at MSHA Headquarters. The results of these compliance reviews and reports of DBE/MBE activity are forwarded to the Director, Office of EO.

POSITION	
Director, Office of Equal Opportunity	(1)
Deputy Director, Office of Equal Opportunity	(1)
District EO Officers	(7)
MBE/EO Officers	(5)
Compliance Officer	(1)
Compliance Auditors	(2)
Office/Clerical	(5)

The Maryland State Highway Administration has established a committee to review all DBE/MBE participation programs submitted by bidders or proposers. The Goal Waiver Advisory Panel (GWAP), is comprised of a SHA representative, an independent public citizen and a representative from the Office of MBE at MDOT. The Assistant Chief Engineer of Construction functions as the SHA DBE/MBE Officer and reports to the SHA Administrator. Approximately 25 percent of the SHA DBE/MBE Officer's time is spent on DBE/MBE Program matters and the following staff is supervised:

POSITION	
Executive Secretary, GWAP	(1)

ATTACHMENT 7

LARGE COST SUPPLY ITEM: STRUCTURAL STEEL

Definition: The term structural steel refers to the steel elements of the structural steel frame essential to the support of the design loads for buildings and bridges, as well as the steel elements in tunnel linings.

Structural steel is eliminated as a subcontractible item for setting disadvantaged/minority business enterprise goals on contracts, as an item of supply. Additionally, as an item of supply, structural steel will not be used to obtain or count disadvantaged/minority business participation under the Disadvantaged/Minority Business Enterprise Program. The installation or erection of structural steel, however, should remain a subcontractible item and as an item available for DBE/MBE participation. The exception to this policy would be the use of a certified DBE/MBE structural steel manufacturer or certified DBE/MBE structural steel fabricator.

Beyond this policy on structural steel, it is vitally important for each Administration to apply the provisions of the Disadvantaged/Minority Business Enterprise Program for furnishing and installing large cost supply items, including the requirement that a DBE/MBE perform a commercially useful function on any contract. The DBE/MBE must have a necessary and useful role in the business transaction, visible outside of the context of the DBE/MBE Program. The role of the DBE/MBE cannot be a superfluous step established to obtain credit under the DBE/MBE Program.

ATTACHMENT 8

MENTOR-PROTEGE PROGRAM GUIDELINES

Under 49 CFR Part 26, Appendix D, the opportunity exists for the operation of a mentor-protege program. This program is designed to move DBEs into non-traditional work areas and strengthen their ability to compete outside the DBE Program by receiving assistance from other firms. This is not a required part of the DBE Program, but an option that may be used with the advance approval of FHWA.

Any mentor-protege relationship shall be based on a written development plan approved in advance by MDOT. The plan shall establish the objectives and roles of each party, the length of time for the plan and the services and resources to be provided by the Mentor Firm to the Protege Firm. The plan, or agreement, may set a fee schedule for direct and indirect costs incurred by the Mentor Firm and these costs may be reimbursable under FTA, FHWA and FAA programs. Reimbursable costs must be related to a specific contract. Other payment provisions are contained in 49 CFR Part 26, Appendix D.

A Protege Firm must be a certified DBE before being approved for this program, including being and remaining an independent business. Additional guidelines shall be developed by MDOT and approved in advance by FHWA if a Mentor-Protege Program is undertaken.

ATTACHMENT 9

DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

Under 49 CFR Part 26, Appendix C, the opportunity exists for the operation of a DBE Business Development Program, designed to move DBEs into non-traditional work areas, strengthen their ability to compete and assist the growth of DBEs by receiving assistance from MDOT. This is not a required part of the DBE program, but an option that may be used within the following general guidelines:

1. Each firm shall participate for a term set by MDOT. The term shall have a developmental stage and a transitional stage.

2. Eligibility criteria for being a DBE must continue to be met.

3. Within six (6) months, the DBE shall develop and submit to MDOT a comprehensive business plan with targets, objectives and goals. The business plan will establish the long and short term goals, the strategy for growth to the point of economic viability in non-traditional work and/or work outside the DBE program.

4. The business plan shall include:

   a. an analysis of market potential, competitive environment and other factors for profitable operation,
   b. an analysis of the firm's strengths and weaknesses,
   c. specific targets, objectives and goals for two (2) years,
   d. estimates of contract awards from the DBE program and other sources to meet objectives and goals and
   e. other information required by MDOT.

5. There shall be annual reviews and appropriate revisions on an MDOT established anniversary date.

6. The DBE shall make annual contract forecasts for each of the next two (2) years. Requirements of the forecasts are listed in 49 CFR Part 26, Appendix B.

7. The developmental stage is designed to assist to access relevant markets and strengthen financial and managerial skills.

8. The transitional stage is designed to prepare DBEs for leaving the program. A transitional management plan to promote profitable business operations in non-traditional work areas shall be submitted at the beginning of the transitional stage.

9. MDOT shall determine if the DBE has achieved its goals and objectives by considering the following factors:

   a. profitability,
   b. sales including the ratio of non-traditional to traditional contracts,
   c. net worth, financial ratios, working capital, capitalization, access to credit and capital,
   d. ability to obtain bonding,
   e. comparison of business profile to non-DBE business profile in same area and business category and
   f. management capacity and capability.

10. The DBE shall be notified when being graduated. The letter shall include findings for each material issue with specific reasons. The DBE has an opportunity to respond regarding why they should not be graduated.

11. Participation in the DBE Business Development Program may be terminated for a pattern of not participating as required.

ATTACHMENT 10

PROMPT PAYMENT OF SUBCONTRACTORS

In accordance with the 1999 Laws of Maryland, Chapter 687, State Finance and Procurement Article, the Maryland State Law on prompt payment is summarized below.

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under a State procurement contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. "Undisputed amount" includes the retainage on a contract.

If a contractor withholds payment, the contractor shall:

1. notify the subcontractor, in writing within the same ten (10) day time period, stating the reasons for payment being withheld,

2. provide a copy of the notice to the procurement officer.

If a subcontractor does not receive payment within the required time period, the subcontractor may give written notice of non-payment to the procurement officer. The notice shall include:

1. the name of the contractor, the project under which the dispute exists and the amount in dispute,

2. provide an itemized description on which the amount is based and

3. if known, provide an explanation for any payment dispute.

Within two (2) business days of receipt of written notice from a subcontractor, a modal representative shall verbally contact the contractor to determine if the amount is undisputed.

If the modal representative determines that all or some of the amount is undisputed, the representative shall instruct the contractor to pay the subcontractor the undisputed amount within three (3) business days. The modal representative shall verbally inform the subcontractor the results of discussions with the contractor.

If the payment is not made, the subcontractor may report the non-payment to the procurement officer. As a result, the modal representative shall schedule a meeting of the modal project manager, the subcontractor and the contractor, as follows:

1. the time and location shall be selected by the modal representative,

2. the meeting shall be no later than ten (10) days after receiving notice from the subcontractor,

3. the meeting purpose is to establish the reasons for non-payment,

4. the modal representative shall require the parties to provide information necessary to evaluate the dispute,

5. if the modal representative determines the contractor is delinquent, further progress payments to the contractor may be withheld until the subcontractor is paid.

If the payment to the subcontractor is not made within seven (7) days after the modal representative determines that the contractor is delinquent, the modal representative shall schedule a second meeting on the dispute as follows:

1. the time and location shall be selected by the modal representative,

2. the meeting shall be no later than five (5) days after the close of the seven (7) day period.

After this second meeting, if the modal representative determines the contractor continues to be delinquent in subcontractor payments, he/she:

1. shall order further payments to the contractor not be processed until payment is made to and verified with the subcontractor,

2. may order work under the contract be suspended based on the contractor's failure to meet contractual obligations under the contract,

3. may require the contractor to pay a penalty to the subcontractor, not to exceed $100 per day, from the date that the payment was required, not to include any period that the modal representative determines that the subcontractor was not diligent in reporting non-payment to the procurement officer.

The contractor or subcontractor may appeal the decision after the second meeting, noted above to the procurement officer. The contractor shall comply with the procurement officer's decision.

An act, failure to act or decision of the procurement officer or modal representative may not:

- affect the rights of the contracting parties under other provision of law,
- be used as evidence on the merits of a dispute between the modal administration and the contractor or the contractor and the subcontractor in any other proceeding or
- result in liability against or prejudice the rights of the modal administration or the Maryland Department of Transportation.

A decision of a procurement officer or a modal representative designated by the procurement officer under this law is not subject to judicial review or the provision for bid protests and contract claims before the Board of Contract Appeals. This law shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any State procurement contract awarded before the effective date of this law, October 1, 1999.

Federally Financed Contracts

In accordance with 49 CFR Part 26, Section 26.29, retainage must be returned within ten (10) days "after the subcontractor's work is satisfactorily completed", as determined by the prime contractor and reviewable by the Contract Administrator for the specific contract. The determination shall be based upon the comparison of the specific contract specifications with the actual work completed.

ATTACHMENT 11

PUBLIC INFORMATION PLAN

The following actions are taken in order to meet the requirements of 49 CFR Part 26 regarding informing concerned parties and providing the opportunity for review and comment of significant program modifications. The key requirements are detailed below with a statement of the actions that have been taken or are underway.

SECRETARY'S POLICY STATEMENT

The Secretary's Policy Statement has been circulated throughout the Maryland Department of Transportation.

The Statement has also been sent to minority and non-minority business associations that work with the Department with a request that they circulate it in their membership and to businesses, DBE and non-DBE who are involved in contracts with MDOT.

DBE PROGRAM UNDER 49 CFR PART 26

The modifications that are required in the Maryland Department of Transportation DBE/MBE Program by 49 CFR Part 26 are incorporated into the MDOT DBE/MBE Manual. In order to solicit input at the development stage, minority business associations and the Maryland Highway Contractors Association were asked to participate in briefings and discussions on the new Federal Regulatory requirements and the provisions in the Manual that satisfy those requirements. The Associations that have attended such briefings are:

Metropolitan Minority Contractors Association
Women Contractor's Association
Women Construction Owners & Executives
National Association of Women Business Owners
Prince George's County Contractors and Business Association
Maryland Highway Contractors Association and the
Eastern Shore Contractors Association

Staff in the Department of Transportation and other non-DOT assisted Maryland Departments have received briefings on the revised regulations.

The MDOT DBE/MBE Manual is incorporated into the Code of Maryland Regulations, beginning with a public notice in the Maryland Register and being available for review through the Maryland regulatory process. When the notice is published, there is a 45 day comment period. Copies of the document are provided to the State's Depositories for Documents. A list of Depositories is included in the Maryland Register and is included in this attachment. The Depositories are located throughout the State and in Washington, D.C., at the Library of Congress.

OVERALL GOALS

The Maryland Department of Transportation, as the State certifying agency, is responsible for managing the preparation of the Minority Business Utilization Study as required by State Law. The Maryland Minority Business Utilization Study is being scheduled for completion October, 1999. Within the study process, the selected consultant firm is developing the Overall Goals.

The Study includes the following:

* Information requested from business associations regarding DBE/MBE membership.
* Databases collected from all jurisdictions in the geographic market area that maintain DBE/MBE databases.
* Surveys sent to minority and non-minority businesses, regarding various aspects of the DBE/MBE Program and the development of goals. Over 5,000 surveys were sent.
* Business owners have participated in interviews regarding the DBE/MBE program and goals.
* Focus groups have been held with various groups to obtain comments and stimulate discussions on the DBE/MBE program and the goals.
* There were widespread notices sent, including associations, inviting business people to call to be included in interviews and focus groups. Associations relayed these notices to their members such as the Maryland Highway Contractors Association including it in their newsletter.

Notices of the proposed Overall Goals with a 45 comment period were included in:

The Maryland Register
Afro-American Newspapers
Maryland Highway Contractors Association Newsletter

Notices of the Overall Goals were sent to the listing of minority business associations. The Maryland Register notice includes the provision for the proposed goals and their rationale to be available for inspection during normal business hours at the MDOT Office of MBE. Comments on the goals may be made for 45 days from the date of the notice. Copies of the document are provided to the State's Depositories for Documents. A list of the Depositories is included in the Maryland Register. The Depositories are located throughout the State and in Washington, D.C., at the Library of Congress. This list is attached.

Depositories for Documents Incorporated by Reference Into the Code of Maryland Regulations (COMAR)

Annapolis

Md. Department of Legislative Reference Library
90 State Circle (21401)
Contact: Lynda Cunningham
410/974-5400, FAX 410/974-5080

Md. State Archives
350 Rowe Blvd. (21401)
Contact: Christine Alvey
410/974-3916, FAX 410/974-3895

Md. State Law Library
Robert C. Murphy Courts of Appeal Bldg.
361 Rowe Blvd. (21401)
Contact: Ruth Hodgson
410/260-1430, FAX 410/974-2063
888-216-8156

Baltimore

State Library Resource Center
Enoch Pratt Free Library
Md. Department
400 Cathedral St. (21201)
Contact: Jeff Korman
410/396-1789, FAX 410/396-9537

Law Library
University of Baltimore
1415 Maryland Ave. (21201)
Contact: Pat Behles
410/837-4559, FAX 410/837-4570

Marshall Law Library
University of Md. School of Law
111 S. Greene Street (21201)
Contact: Bill Sleeman
410/706-7400, FAX 410/706-8354

Catonsville

Albin O. Kuhn Library
University of Md. Baltimore County
5401 Wilkens Ave. (21228)
Contact: Simmona Simmons-Hodo
410/455-2358, FAX 410/455-1153

Charlotte Hall

Southern Md. Regional Library
Corner of Md. Rts. 5 and 6
P.O. Box 459 (20622)
Contact: Pat Ward
301/934-9442, FAX 301/884-0438

College Park

McKeldin Library
University of Md.
Maryland Department (20740)
Contact: Ann Hudak
301/405-9210, FAX 301/314-9416

Frostburg

Frostburg State University
Lewis J. Ort Library
1 Stadium Drive (21532)
Contact: Randall A. Lowe
301/689-4426/4424, FAX 301/687-7069

Hagerstown

Government Reference Service of
Washington County Free Library
100 South Potomac Street (21740)
Contact: Gloria Urban
301/739-3250, FAX 301/739-5839

Largo

Prince George's Community College Library
301 Largo Road (20772)
Contact: Priscilla Thompson
301/322-0468, FAX 301/808-8847

Princess Anne

Frederick Douglass Library
University of Md. Eastern Shore (21853)
Contact: Martha Zimmerman
410/651-7540, FAX 410/651-6269

Rockville

Montgomery County Public Library
Rockville Branch
99 Maryland Avenue (20850)
Contact: Caren Genison
301/217-3863, FAX 301/217-3931

Salisbury

Salisbury State University
Blackwell Library
College and Camden Avenues (21801)
Contact: Michael McLane
410/543-6130, FAX 410/543-6203

Towson

Albert S. Cook Library
Towson University
8000 York Road (21252)
Contact: Carl Olsen
410/830-2462 or 3267, FAX 410/830-3829

Washington, D.C.

Library of Congress
Exchange and Gift Division
10 First St., S.E. (20540)
Contact: John Chin/Ed Malone
202/707-9468, FAX 202/707-2086

Effective 6/18/99

ATTACHMENT 12

FEDERAL REPORTING REQUIREMENTS

In accordance with 49 CFR Part 26, Section 26.11 the following actions are being taken by the MDOT Modal Administration, the State Highway Administration, Maryland Aviation Administration and the Mass Transit Administration.

State Highway Administration

A "Special Notice to Contractors" is included in all bids. The notice informs all bidders to furnish the names and addresses of the firms that submitted quotes with their bids. The State Highway Administration will contact the firms requesting the age of the firm and the annual gross receipts or revenues. The DBE status is provided to the State Highway Administration by MDOT, Office of MBE.

Maryland Aviation Administration

Contract bid documents will require all bidders to submit the names and addresses of firms who submitted quotes to them for Maryland Aviation contracts containing Federal funds. The Maryland Aviation Administration will contact each firm to request that they submit the age of the firm and the annual gross receipts or revenues. The DBE status is provided to the Maryland Aviation Administration by MDOT, Office of MBE.

Mass Transit Administration

Contract bid documents will require all bidders to submit the names and addresses of firms who submitted quotes to them for Mass Transit Administration contracts containing Federal funds. The Mass Transit Administration will contact each firm to request that they submit the age of the firm and the annual gross receipts or revenues. The DBE status is provided to the Mass Transit Administration by MDOT, Office of MBE.

NOTE: The annual gross receipts or revenues and the age of the firm may have been obtained previously and may not require a request to the prospective or actual subcontractors each time they appear on a contract list.

ATTACHMENT 13

MINORITY BUSINESS ENTERPRISE PROGRAM FORMS

D-EEO-002 Minority Business Evaluation for Continuation of Recertification

D-EEO-003 MDOT Schedule for Participation of Minority Business Enterprises

D-EEO-004 MDOT Minority Contractor Project Disclosure and Participation Statement

D-EEO-005 Minority Contractor Unavailability Certificate

D-EEO-006 MDOT Joint Venture Disclosure Affidavit

D-EEO-025 Quarterly Report for MBE/DBE Waiver

D-EEO-037 Subcontractor's Performance Evaluation - Project Completion

D-EEO-038 Subcontractor's Performance Evaluation - Annual Report

D-EEO-039 Report of Unsatisfactory Subcontractor Performance/Progress

D-EEO-040 Personal Net Worth: Addendum to Certification Application

MINORITY BUSINESS ENTERPRISE EVALUATION FOR RECERTIFICATION

Administration _____

Date Prepared _____

Minority Contractor

Name _____

Address _____

_____

_____

Phone No. _____

MBE Certfication No. _____

Contract/Project Number: _____ Prime Contractor _____

Description of Work to be Performed: _____

_____

_____

_____

	Acceptable	Not Acceptable	Unable to Determine
1. Expertise & Skill	_____	_____	_____
2. Responsiveness	_____	_____	_____
3. Control (operational & managerial)	_____	_____	_____
4. Supervision	_____	_____	_____
5. Equipment	_____	_____	_____

Comments: _____

_____

_____

_____

Project Engineer Signature Date

_____

PRINTED NAME

EEO Officer Signature Date

_____

PRINTED NAME

DIRECTIONS: This form is to be prepared by the Project Engineer, signed and forwarded to the Administration/District EEO Officer. The appropriate EEO Officer will review this evaluation and conduct an appropriate investigation to determine the suitability of less than "acceptable" evaluations. The findings of the investigation in memorandum form will be attached to this form and will be forward to the MBE Officer, Maryland Department of Transportation.

Terms:

1. Expertise/Skill: Does the minority owner(s) possess the knowledge and technical skill to perform the work?

2. Responsiveness: Did the minority owner(s) begin work on the project/contract within a reasonable time, date, and place agreed upon? Did the minority owner begin work each day at the agreed upon time?

3. Control: Did the minority owner(s) exercise both operational and managerial control over his/her workforce?

4. Supervision: Did the minority owner(s) or a designated employee of the minority owner act as supervisor of the project/contract?

5. Equipment: Did the minority owner(s) own equipment used on the contract/project or was it rented/leased according to accepted industry standards and in conformance with the MDOT MBE Manual?

MARYLAND DEPARTMENT OF TRANSPORTATION
SCHEDULE FOR PARTICIPATION OF MINORITY BUSINESS ENTERPRISES

1. PRIME CONTRACTOR — NAME OF FIRM — ADDRESS (Number, Street, City, State, Zip) TELEPHONE: Area Code ( )

2. PROJECT LOCATION (Number, Street, City, State, Zip)

3. PROJECT NUMBER: _____ 4. TOTAL CONTRACT DOLLAR AMOUNT: $ _____

5. LIST THE DATA REQUESTED FOR EACH MINORITY FIRM INVOLVED IN THIS PROJECT:

a. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed:

Project Commitment Date: Project Completion Date:

Agreed Dollar Amount: $_____ Percentage of Total Contract:_____%

b. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed:

Project Commitment Date: Project Completion Date:

Agreed Dollar Amount: $ _____ Percentage of Total Contract: _____%

c. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed:

Project Commitment Date: Project Completion Date:

greed Dollar Amount: $ _____ Percentage of Total Contract: _____%

d. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed:

Project Commitment Date: Project Completion Date:

Agreed Dollar Amount: $ _____ Percentage of Total Contract: _____%

e. MINORITY FIRM: _____
(Name of Firm) (Number) (Street) (City) (State) (Zip)

Work or Service to be performed:

Project Commitment Date: Project Completion Date:

Agreed Dollar Amount: $_____ Percentage of Total Contract: _____ %

6. MINORITY FIRMS TOTAL DOLLAR AMOUNT: $ _____ MINORITY FIRMS TOTAL PERCENTAGE _____ %

7. REMARKS (Use Plain Bond for Additional Comments)

DO NOT WRITE BELOW THIS LINE — MBE MDOT USE ONLY

8. THIS FORM PREPARED BY:
(First) (Middle Initial) (Last) (Title)

9 PROVED: ☐ YES ☐ NO

DATE

SIGNATURE — ADMINISTRATION — MINORITY BUSINESS ENTERPRISE OFFICER

NOTE: If the Minority Contractor Project Disclosure and Participation Statement is submitted after Bid opening, a copy of the conditional contract with each Minority Business Enterprise must be submitted with the statement and schedule for participation.

FORM D-EEO-003 (July 1995) ADMINISTRATION COPY

RETURN TO:
Minority Business Enterprise Office
Maryland Department of Transportation
P.O. Box 8755
Baltimore-Washington Int'l Airport, Md. 21240
(410) 859-7327

MARYLAND DEPARTMENT OF TRANSPORTATION

If any item does not apply, please mark "N/A"

MINORITY CONTRACTOR PROJECT DISCLOSURE AND PARTICIPATION STATEMENT

1. PRIME CONTRACTOR – NAME OF FIRM – COMPLETE ADDRESS

2. PROJECT NUMBER: _____

3. PROJECT LOCATION (Number, Street, City, State, Zip)

4. PROJECT COMMITMENT DATE:

5. SUBCONTRACTOR ENTERPRISE (Check one)

☐ Individual ☐ Partnership ☐ Corporation ☐ Joint Venture

6. THE UNDERSIGNED SUBCONTRACTOR IS PREPARED TO PERFORM THE WORK/SERVICE HEREIN DESCRIBED IN CONNECTION WITH THE PROJECT

WORK OR SERVICE	Commitment Date	Completion Date

This work/service will not be subcontracted to any non-minority firm.

BID PRICE FOR THIS WORK/SERVICE: $ _____

7. SOURCE AND AMOUNT OF WORKING CAPITAL

SOURCE	AMOUNT	REMARKS

8. SUBCONTRACTOR'S SUPERVISION STAFF TO INCLUDE FOREMEN (Name, Address, Social Security Number, Title)

9. BONDS – AMOUNT AND TYPE REQUIRED BY PRIME CONTRACTOR

10. BONDING COMPANY – NAME AND ADDRESS

ARE BONDS GUARANTEED BY THIRD PARTY ☐ YES ☐ NO IF YES – NAME AND ADDRESS

12. DOLLAR AMOUNT OF THIS PROJECT ALLOCATED FOR MATERIAL PURCHASES. $ _____

13. PERCENTAGE OF WORK PERFORMED BY OTHER THAN OWN WORK SOURCE (Include Name of Company and Address): _____ % (Use back if necessary)

14. STATE THE TERMS OF ANY ORAL OR WRITTEN AGREEMENT(S) OR UNDERSTANDING(S) WITH NON-MINORITY PERSONS OR FIRMS RELATING TO ASSISTANCE, FINANCIAL OR OTHERWISE, TO BE PROVIDED BY SAID PERSONS OR FIRMS.

THE UNDERSIGNED SUBCONTRACTOR WILL ENTER INTO A WRITTEN CONTRACT WITH: _____ FOR THE WORK/SERVICE INDICATED ABOVE UPON THE PRIME CONTRACTOR'S EXECUTION OF A CONTRACT WITH THE MARYLAND DEPARTMENT OF TRANSPORTATION. THE UNDERSIGNED SUBCONTRACTOR IS CERTIFIED BY THE MARYLAND DEPARTMENT OF TRANSPORTATION AS A MINORITY BUSINESS ENTERPRISE, AS OF (DATE) _____

SIGNATURE SUBCONTRACTOR

PRINT/TYPE NAME OF FIRM

NUMBER STREET

CITY STATE ZIP DATE

I AGREE TO THE TERMS AND CONDITIONS STATED ABOVE

SIGNATURE PRIME CONTRACTOR

PRINT/TYPE NAME OR FIRM

NUMER STREET

CITY STATE ZIP DATE

MINORITY BUSINESS ENTERPRISE OFFICE
MARYLAND DEPARTMENT OF TRANSPORTATION
P. O. BOX 8755
BALTIMORE-WASHINGTON INT'L AIRPORT, MD. 21240
(301) 787-7161

MARYLAND DEPARTMENT OF TRANSPORTATION
MINORITY CONTRACTOR UNAVAILABILITY CERTIFICATE

1. IT IS HEREBY CERTIFIED THAT THE FIRM OF

_____
(Name of Firm)

_____, on _____
(Number) (Street) (City) (State) (Zip) (Date)

CONTACTED THE MINORITY BUSINESS ENTERPRISE, _____
(Name of Minority Business)

_____, SEEKING TO OBTAIN A BID FOR WORK/SERVIC
(Number) (Street) (City) (State) (Zip)

IN RELATION TO PROJECT NUMBER _____.

2. LIST THE TYPE OF WORK/SERVICE REQUESTED:

3. INDICATE THE FORM OF BID SOUGHT. _____

TO THE BEST OF MY KNOWLEDGE AND BELIEF, SAID MINORITY BUSINESS ENTERPRISE IS EITHER UNAVAILABLE FOR THE WORK/SERVIC IN RELATION TO PROJECT NUMBER: _____, OR IS UNABLE TO PREPARE A BID FOR THE FOLLOWING REASON(S):

_____
(Name - First - Middle - Last) (Title)

_____
(Address - Number - Street)

_____
(City - State - Zip)

_____
(Signature)

_____
(Date)

---

4. IT IS HEREBY CERTIFIED THAT THE FIRM OF

_____
(Name of Minority Firm)

_____
(Number) (Street) (City) (State) (Z

WAS OFFERED AN OPPORTUNITY TO BID ON PROJECT NUMBER _____ ON _____ BY _____
(Date) (Name)

_____.
(Title) (Firm Name)

THE ABOVE STATEMENT IS A TRUE AND ACCURATE ACCOUNT OF WHY THE FIRM OF _____
(Name of Minority Firm)

DID NOT SUBMIT A BID ON PROJECT NUMBER _____.

_____
(Name) (Title)

_____
(Signature)

RETURN AFFIDAVIT TO:
Minority Business Enterprise Office
Maryland Department of Transportation
P. O. Box 8755
Baltimore-Washington Int'l Airport, Md. 21240
(301) 787-7161

MARYLAND DEPARTMENT OF TRANSPORTATION
JOINT VENTURE DISCLOSURE AFFIDAVIT

If any item does not apply, please mark "N/A"

1. FIRST PARTY OF JOINT VENTURE:

A. FIRM: _____
(Name of Firm)

_____
(Number) (Street) (City) (State) (Zip) (Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____ %
(Majority Owner of Firm)

_____ _____
(Title) (Home Telephone) (Business Telephone)

D. LIST CAPITAL CONTRIBUTIONS: TOTAL CASH: $ _____

EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST

E. INDICATE ESTIMATED CASH FLOW: $ _____

F. LIST ALL PROFESSIONAL LICENSES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE

Professional License	Number	Licensee	Professional License	Number	Licensee

2. SECOND PARTY OF JOINT VENTURE:

A. FIRM: _____
(Name of Firm)

_____
(Number) (Street) (City) (State) (Zip) (Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____ %
(Majority Owner of Firm)

_____ _____
(Title) (Home Telephone) (Business Telephone)

D. LIST CAPITAL CONTRIBUTIONS: TOTAL CASH: $ _____

EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST	EQUIPMENT	TOTAL	COST

E. INDICATE ESTIMATED CASH FLOW: $ _____

F. LIST ALL PROFESSIONAL LICENSES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE

Professional License	Number	Licensee	Professional License	Number	Licensee

3. THIRD PARTY OF JOINT VENTURE:

A. FIRM: _____
(Name of Firm)

_____
(Number) (Street) (City) (State) (Zip) (Telephone)

B. NAME: _____ C. MINORITY OWNERSHIP: _____ %
(Majority Owner of Firm)

_____ _____
(Title) (Home Telephone) (Business Telephone)

E. INDICATE ESTIMATED CASH FLOW: $ _____

F. LIST ALL PROFESSIONAL LICENSES HELD BY YOUR FIRM WHICH AUTHORIZE WORK/SERVICE

Professional License	Number	Licensee	Professional License	Number	Licensee

4. DESCRIBE IN DETAIL THE ACCOUNTING PROCEDURES TO BE USED IN THE JOINT VENTURE.

5. PARTY OF THE VENTURE WHICH WILL SUPERVISE THE ON-SITE WORK/SERVICE (Name and Address of Firm)

6. PARTY OF THE VENTURE WHICH WILL SUPERVISE THE ADMINISTRATIVE OFFICE (Name and Address of Firm)

NOTE: Include for each party of this joint venture a complete Business Resume to include such items as: business qualifications, experience, etc.

7. PARTY OF THE JOINT VENTURE RESPONSIBLE FOR MATERIAL PURCHASES (Name and Address)

8. ESTIMATED COST OF MATERIAL PURCHASES: $

9. WILL A SEPARATE COST CENTER BE ESTABLISHED FOR THIS JOINT VENTURE? ☐ YES ☐ NO

IF YES, FURNISH FOLLOWING INFORMATION:

a. Where will cost center be located (Street, Number, City, State)?

b. Describe in detail the accepted accounting method of allocating overhead applicable to the joint venture. (Use separate sheet if necessary)

10. THE JOINT VENTURE PARTY RESPONSIBLE FOR MAINTAINING THE ACCOUNTING RECORDS (Name and Address)

11. REIMBURSABLE EXPENSES AND MANNER OF REIMBURSEMENT

12. AUTHORITY OF EACH JOINT VENTURE PARTY TO COMMIT OR OBLIGATE THE OTHER

13. REMARKS

The affidavit should be subscribed and sworn to by the principles of each joint venture and should contain the following statement at the close thereof, above the signatures:

"The undersigned do hereby swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of the joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to Maryland Department of Transportation current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the arrangements hereinabove stated and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the Maryland Department of Transportation or the Federal Government PRIOR TO INCLUSION IN THE MARYLAND DEPARTMENT OF TRANSPORTATION MINORITY BUSINESS ENTERPRISE DIRECTORY AND SUBSEQUENT TO AWARD OF CONTRACT AS DEEMED NECESSARY. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon."

Trade secrets, information privileged by law, and confidential commercial, financial, geological, or geophysical data furnished will be protected.

Sworn and subscribed before me this

_____ day of _____.

_____
Notary Public

My commission expires: _____

_____
Signature of Affiant

_____
Printed Name

_____
Signature of Affiant

_____
Printed Name

_____
Signature of Affiant

_____
Printed Name

ADDITIONAL COMMENTS MAY BE ATTACHED TO THIS AFFIDAVIT ON PLAIN BOND PAPER, IF APPLICABLE.

THE MARYLAND DEPARTMENT OF TRANSPORTATION MAY REQUEST ADDITIONAL INFORMATION IF NEEDED.

"The undersigned, as a representative of _____ Company, does hereby swear that I am authorized to act on its behalf and that in this capacity and to the best of my knowledge and belief, the information provided herewith relevant to the joint venture of _____ is accurate, complete and current, and fairly represents the joint venture; further, that I have personally reviewed the material and assured myself of its accuracy. It is recognized and acknowledged that the statements herein are being given under oath and any material misrepresentation will be grounds for terminating any contract which may be awarded in reliance hereon."

Sworn and subscribed before me this

_____ day of _____.

_____
Notary Public

My Commission Expires _____

_____
Signature of Affiant

_____
Printed Name

QUARTERLY REPORT FOR MBE/DBE WAIVERS

IODAL ADMINISTRATION

REPORTING PERIOD _____

PRIME CONTRACTOR	CONTRACT#	VALUE	PROPOSED DBE\MBE PARTICIPATION MBE% / DBE%	FOLLOW-UP DOC ON FILE Y / N	ACTUAL DBE/WBE APPROVED MBE%	DBE%	NAME OF OFFICIAL APPROVING	APPROV DATE

Form D-EEO-025

MARYLAND DEPARTMENT OF TRANSPORTATION
SUBCONTRACTORS PERFORMANCE EVALUATION

PROJECT COMPLETION

MBE Contractor

(Name)

(Address)

Contract Number

Project Description

Total Score from Page #2 _____

Subcontract Dollar Amount _____

Check:

Prime Contractor _____

Joint Venture Partner _____

Completion Date

		Rating	WT.	Score
I.	Management			
	a. Cooperation with Administration		1.5	
	b. Cooperation with other Government Agencies, Utilities, WRA, Etc.		1.0	
	c. Cooperation with other Subcontractors or other Prime Contractors		1.0	
	d. Attitude toward property owners		1.0	
	e. Attitude toward contract changes		.5	
	f. Prompt and adequate response to correspondence and/or instructions		.5	
			Subtotal	
II.	Personnel			
	a. Sufficient quantity of on-site supervision		1.0	
	b. Quality of on-site supervision		1.5	
	c. Sufficient quantity of skilled personnel		1.0	
	d. Quality of skilled personnel		1.5	
			Subtotal	
III.	Equipment			
	a. Sufficient amount of equipment		1.5	
	b. Proper type of equipment		1.0	
	c. Condition of equipment		1.0	
			Subtotal	

FORM D-EEO-037-A (April 1987)

IV. Work Quality	Rating	WT.	Score
a. Job safety practices		1.0	
b. Timely work progress/completion		1.5	
c. Specification Compliance		1.0	
d. Sediment and Erosion Control		1.0	
e. Materials approval obtained		.5	
		Subtotal	

Subtotals I	
II	
III	
IV	
TOTAL	

Project Monitor's Comments:

Project Monitor's Signature _____ Date _____

EEO Officer's Comments:

EEO Officer's Signature _____ Date _____

Instructions: The Subcontractors Performance Evaluation is to be completed at the time of final acceptance of the contract by the Administration. It should be retained by the Administration for use in preparation of the Annual Evaluation.

Rate 1 to 5 with 2.5 being acceptable, (1.0 poor and 5.0 excellent) times weight factor for total score. Any rating of less than 1.5 or greater than 3.5 should be explained under comments.

MARYLAND DEPARTMENT OF TRANSPORTATION
SUBCONTRACTORS PERFORMANCE EVALUATION
ANNUAL REPORT

MBE Contractor

_____
(Name)

_____
(Address)

_____

Year _____

Administration _____

Number of Projects _____

Total Dollar Amount $ _____
(Nearest $10,000)

MBE/WBE [ ]

SCORE (Average of all projects)

I.	Management	
II.	Personnel	
III.	Equipment	
IV.	Work Quality	
	Total	

COMMENTS:

_____

_____

Instructions: The Annual Subcontractor Performance Evaluation should be Summary of Project Completion Reports on file for all projects through December 31, of the year being reported.
An overall score of 50 is to be considered average. Those scores falling out of the range of 40-60 should be accompanied by an explanation and supporting documentation.

FORM D-EEO-038 (October, 1993)

MARYLAND DEPARTMENT OF TRANSPORTATION
REPORT OF UNSATISFACTORY SUBCONTRACTOR PERFORMANCE/PROGRESS

This report is to be completed by the project monitor and returned to the EEO Officer to report UNSATISFACTORY PERFORMANCE/PROGRESS of a subcontractor when it occurs, either during the course of the contract, at the completion, after completion or annually. Use a separate form for each subcontractor. Submit subsequent additional reports to indicate continued unsatisfactory performance. Please furnish complete information. Each completed form must be signed on page 3 by the project monitor.

Subcontractor

_____
(Name)

_____
(Address)

_____

Contract Number _____

Project Description _____

_____

_____

_____

Check: Prime Contractor _____ Amount _____

Joint Venture Partner _____ Completion Date _____

Number of change orders issued on this contract _____

Claims Pending _____

This report is being filed [ ] While contract is in progress [ ] With Annual Report

[ ] At Completion [ ] After Completion

Provide all requested data. Place an "X" in the box next to the statements which describe this contractors UNSATISFACTORY PERFORMANCE/PROGRESS. Attach supporting information, records of any claims or disputes, and any correspondence with the Contractors Bonding Company.

UNSATISFACTORY PERFORMANCE AREAS

I. Subcontractor's work progress is unsatisfactory

[ ] At Start [ ] In Progress [ ] At Completion

Number of days allowed by contract for work completed to date: _____

Actual days required for work completed to date: _____

[ ] Contractors progress has had an adverse effect on work schedule or other contractors.

II. Subcontractors performance is unsatisfactory in the following areas:

[ ] Cooperation with other contractors, subcontractors, or other agencies.

[ ] Attitude and concern toward traveling public and property owners.

[ ] Adequate response to Administration correspondence and/or instructions.

[ ] Management of Affirmative Action Program.

[ ] Management of Subcontractors.

[ ] Supervision of Contract.

[ ] Manpower (Quality/Quantity).

[ ] Equipment (Quality, Type, Condition).

[ ] Specification Awareness, Review, Planning.

[ ] Use or attempted use of materials not specified or approved.

[ ] Job safety practices.

[ ] Timely work progress.

[ ] Compliance with sediment and erosion control regulations.

[ ] Other (provide details)

III. The completed work is unsatisfactory in the following areas:

[ ] Workmanship

[ ] Compliance with specifications

[ ] Final Clean-up

[ ] Frequency and scope of problems appearing after completion

[ ] Other (provide details)

IV. [ ] Complaints concerning subcontractors performance have been received and verified.

V. Unsatisfactory Performance has resulted in:

[ ] A major problem resulting in substantial additional cost.

[ ] A serious problem requiring special attention by the Inspection or Administrative Services of a State Agency.

[ ] Inconvenience and delays for the State, its citizens, or other contractors or agencies.

[ ] Other

Do you recommend that the Administration consider disqualification of this subcontractor based on performance on this contract?

[ ] Yes [ ] No

_____ _____

Project Monitor Date

Instructions: A report of Unsatisfactory Performance or Progress should be initiated by the Project Monitor. Details and all supporting data must be attached for each unsatisfactory category.

MINORITY BUSINESS ENTERPRISE
MARYLAND DEPARTMENT OF TRANSPORTATION
ADDENDUM TO CERTIFICATION APPLICATION

Complete this form for: (1) each socially disadvantaged proprietor, (2) each socially disadvantaged limited and general partner whose combined interest total 51% or more, or (3) each socially disadvantaged stockholder making up 51% or more of voting stock.

Name _____ Business Phone ( )

Residence Address _____ Residence Phone ( )

City, State & Zip Code _____

Business Name of Applicant _____

Signature: _____ Owner/Title: _____

PERSONAL FINANCIAL STATEMENT As of _____, 19____

ASSETS (Omit Cents)		LIABILITIES (Omit Cents)	
Cash on hand	$	Accounts Owed	$
Checking Accounts	$	Notes Payable to Banks and Others (Describe in Section 1)	$
Savings Accounts	$	Installment Account (Auto)	$
IRA or Other Retirement Account	$	Installment Account (Other)	$
Accounts and Notes Receivable	$	Loan on Life Insurance	$
Life Insurance – Cash Surrender Value Only (Describe in Section 7)	$	Mortgages on Real Estate (Exclude Primary Residence) (Describe in Section 3)	$
Stocks and Bonds (Describe in Section 2)	$	Unpaid Taxes (Describe in Section 5)	$
Real Estate (excluding Primary Residence) (Describe in Section 3)	$	Other Liabilities (Describe in Section 6)	$
Automobile(s) – Present Value	$		
Other Personal Property and Assets (Describe in Section 4)	$	**Total Liabilities**	$
Total Assets	$	**Net Worth** (Total Assets Minus Total Liabilities)	$

Source of Income

Salary $_____

Net Investment Income $_____

Real Estate Income $_____

Other Income $_____

Section 1. **Notes Payable to Banks and Others** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) (Exclude items listed in Section 6.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 2. **Stocks and Bonds** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) **(Do not include value of ownership interest in the applicant or certified firm.)**

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 3. **Real Estate Owned** (List each parcel separately. Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A (Primary Residence)	Property B	Property C
Type of Property			
Address			
Date Acquired			
How Acquired			
Original Cost			
How Titled (Joint Tenants, Tenants by-the-Entireties, etc. and names of persons)			
Name and Address Of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			

Section 4. **Other Personal Property and Other Assets** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) (Describe, and if pledged as security, state name and address of lien holder, amount of lien, and terms of payment.) (Art, jewelry, antiques, furs, collectables, boats, etc.) (Exclude ownership interest in the applicant or certified firm.)

Section 5. **Unpaid Taxes** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) (Describe in detail: type, to whom payable, when due, amount and to what property (if a tax lien)

Section 6. **Other Liabilities** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) (Describe in detail.) (Includes Judgments, Court Ordered Support Obligations, etc.)

Section 7. **Life Insurance Held** (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.) (Give face amount, cash surrender value of policies, name of insurance company, and policy number).

IN ORDER TO DETERMINE IF I AM ELIGIBLE TO PARTICIPATE IN THE MARYLAND MINORITY BUSINESS ENTERPRISE PROGRAM, I ACKNOWLEDGE AND AGREE THAT REPRESENTATIVES OF THE MARYLAND DEPARTMENT OF TRANSPORTATION SHALL BE PERMITTED TO MAKE INQUIRIES OF CREDIT BUREAUS, BANKS, LENDING INSTITUTIONS, BONDING COMPANIES, VENDORS, SUPPLIERS AND INSURANCE COMPANIES CONCERNING MY FINANCIAL RESPONSBILITY.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT.

Signature of Person Filing: _____

Date: _____

Sworn to before me this _____ day of _____

Signature of Notary Public: _____

Printed/Typed Name of Notary Public: _____

My Commission Expires: _____

I DO NOT WISH TO BE CONSIDERED IN THE FEDERAL DBE PROGRAM. I DO WISH TO BE INCLUDED AS AN MBE FOR STATE CONTRACTS ONLY.

Signature of Person_____

Date_____

ATTACHMENT 14

DBE REQUIREMENTS FOR TRANSIT VEHICLES

Transit Vehicle Manufacturers

Transit Vehicle Manufacturers must certify that they have complied with the requirements of 49 CFR Part 26, paragraph 26.49, in order to be authorized to bid or propose on Federal Transit Administration (FTA)-assisted transit vehicle procurements.

Transit Vehicle Manufacturers must establish an annual overall percentage goal to be submitted to the FTA for approval. The Transit Vehicle Manufacturers should use paragraph 26.45 as a guide for setting the Overall Goal. The base used for the calculation is the amount of FTA financial assistance included in transit vehicle contracts for the fiscal year in discussion. Funds for work performed outside of the United States, its territories, possessions and commonwealths should be excluded. The same requirements regarding the Overall Goals that apply to the Maryland Department of Transportation (MDOT) from the U.S. Department of Transportation apply to the Transit Vehicle Manufacturers.

Transit Vehicle Manufacturers can make the certification required by 49 CFR Part 26 if the goal has been submitted and FTA has approved it or not disapproved it.

Maryland Department of Transportation

MDOT may establish project specific goals for DBE participation in the procurement of transit vehicles with the approval of FTA.

If MDOT, through the Maryland Aviation Administration or State Highway Administration, is procuring vehicles or specialized equipment, MDOT may use the provisions of paragraph 26.49, as presented above, for these procurements. In these instances, the manufacturers of this equipment must meet the same requirements as the transit vehicle manufacturers must meet for FTA-assisted procurements. This includes goal approval by the Federal Highway Administration or the Federal Aviation Administration.