

MODOT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM SUBMITTAL

FFY 2025 October 1, 2024

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Policy Statement

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

It is the policy of MoDOT to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Business Development & Compliance Director Missy Stuedle has been delegated as the DBE Liaison Officer. In that capacity, the BDC Director is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the [Name Recipient] in its financial assistance agreements with the Department of Transportation.

MoDOT has disseminated this policy statement to the Missouri Highway Transportation Commission and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

Subpart A – General Requirements

26.1 Objectives

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

26.3 Applicability

MoDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

MoDOT is the recipient of federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94, and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58.

MoDOT is the recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Public Law 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.

26.5 Definitions

MoDOT will adopt the definitions contained in 49 CFR 26.5 for this program.

Section 26.7 Non-discrimination Requirements

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

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

26.11 Record Keeping Requirements

Reporting to DOT: 26.11(a)

We will report DBE participation to FHWA, FTA, and FAA containing all the information described in the Uniform Report supplied by USDOT. We will submit this report at the intervals required by and in a format acceptable to each concerned Operating Administration.

Bidders List 26.11(c)

MoDOT will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts and enter it into a system designated by USDOT:

1. Firm name;
2. Firm address including ZIP code;
3. Firm's status as a DBE or non-DBE
4. Race and gender information for the firm's majority owner;
5. NAICS code applicable to each scope of work the firm sought to perform in its bid;
6. Age of the firm; and
7. The annual gross receipts of the firm, obtained in brackets of:
 - a. Less than \$1 Million
 - b. \$1-3 Million
 - c. \$6-10 Million, etc.

We will collect this information in the following ways:

Require that bidders submit, as a matter of bid responsiveness, names of firms that they included in their bid or considered, and their corresponding work scopes. MoDOT will then obtain the remaining information, including: firm address, race/gender, age of firm, and gross receipts through a combination method of requiring the information on prime and subcontractor prequalification questionnaires and obtaining the information through surveys of any firms which are not prequalified. The DBE status of firms will be verified by checking the [MRCC Directory](#). The NAICS codes will be recorded by matching the scope of work listed by the bidder to the appropriate codes.

DBE Firm Records 26.11(d)

MoDOT maintains records documenting a firm's compliance with the requirements of 49 CFR 26, including a complete application package for each certified firm and all Declarations of Eligibility, change notices, and on-site visit reports. These records are retained in accordance with applicable record retention requirements per MoDOT's financial assistance agreement. Other certification or compliance records are retained for a minimum of three (3) years unless otherwise provided by applicable retention requirements, whichever is longer.

MAP-21 Report 26.11(e)

Each year MoDOT will report to the DOT's Departmental Office of Civil Rights the following information:

1. The number and percentage of in-state and out-of-state DBE certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);
2. The number of DBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;
3. The number of decertified firms:
 - a. Total in-state and out-of-state decertified;

- b. Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;
 - c. Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.
- 4. The number of in-state and out-of-state firms summarily suspended;
- 5. The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantage status;
- 6. The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status.

26.13 Federal Financial Assistance Agreement

MoDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

MoDOT 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 sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13(b)

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

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

Subpart B: Administrative Requirements

26.21 DBE Program Updates

MoDOT will continue to carry out the DBE program until all funds from USDOT financial assistance have been expended. MoDOT will provide updates to USDOT whenever it makes significant changes in the DBE program.

26.23 Policy Statement

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

26.25 DBE Liaison Officer (DBELO)

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

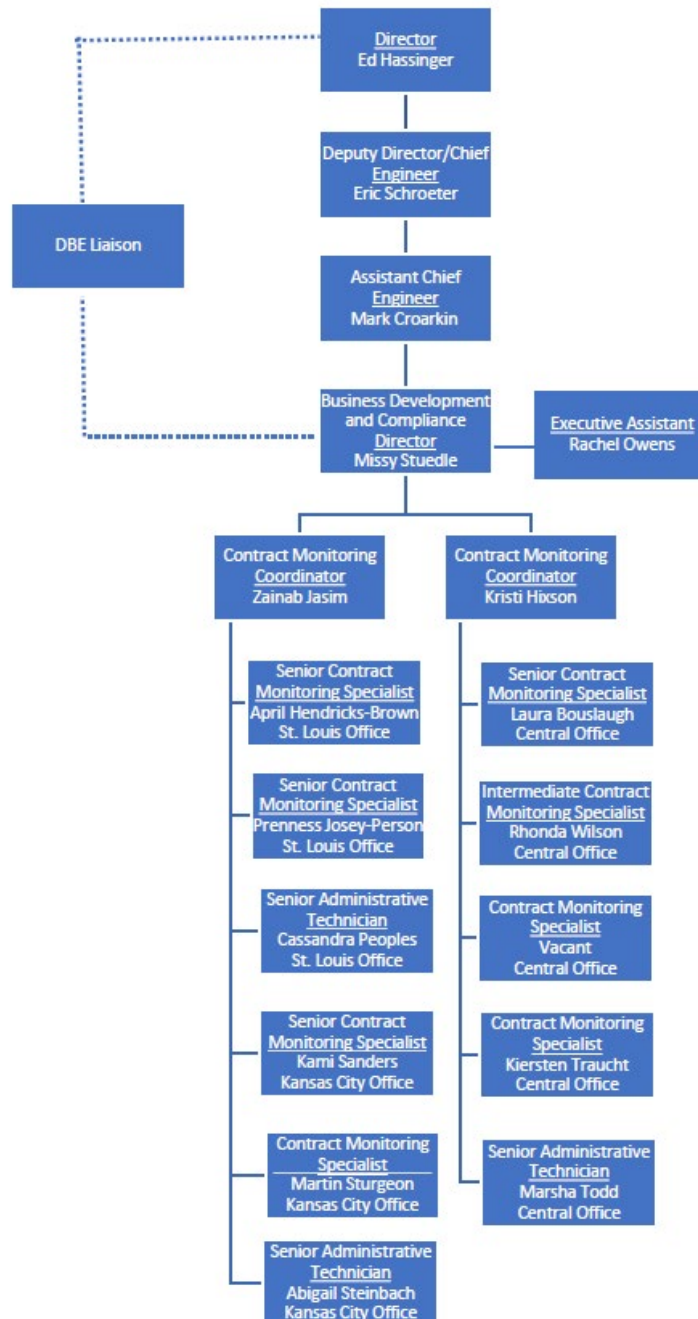
Missy Stuedle, MoDOT Business Development & Compliance Director
1617 Missouri Blvd. Jefferson City, MO 65102
573-751-1216
Missy.Stuedle@modot.mo.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MoDOT complies with all provision of 49 CFR Part 26. The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of [indicate the number of staff] to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with the program.
3. Works with all departments to set overall annual goals and project by project goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes MoDOT's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Director and Commission on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Reviews DBE certification recommendations from staff according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Missouri.
12. Provides outreach to DBEs and community organizations to advise of opportunities.
13. Maintains the MoDOT DBE Directory and updates.

The DBELO has direct, independent access to the MoDOT Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found below:

BUSINESS DEVELOPMENT AND COMPLIANCE DIVISION



26.27 DBE Financial Institutions

MoDOT will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged persons in Missouri and make reasonable efforts to use these institutions, within state law. In addition, MoDOT will conduct internet research aimed at locating articles, websites, or any other information that may assist in locating such firms.

Once MoDOT has located DBE owned financial institutions, MoDOT will provide the names and addresses to all contractors, subcontractors, and DBE firms. In addition, MoDOT will contact these institutions in order determine services available and discuss innovative cooperative efforts to encourage contractors to use the services of the institutions.

26.29 Prompt Payment Mechanisms

(a) MoDOT requires all contractors to pay all subcontractors and suppliers for satisfactory performance of services in compliance with the prompt payment statute, Revised Statutes of Missouri, Section 8.960. MoDOT also requires prompt payment, as defined in Section 8.960. For purposes of implementation of 49 CFR Part 26 satisfactory completion is determined by MoDOT personnel. This requirement is also contained in the contract specifications Section 109.13, thus is a contractual requirement. The Missouri statute contains clear penalties for non-compliance. Prompt payment requirement is applicable to all tiers of subcontractors and suppliers.

(b) MoDOT has eliminated the withholding of “retainage” for general or prime contractors in an effort to alleviate the impact of the prompt payment requirements.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) MoDOT has started the use of a payment monitoring system, Signet, to track payments made to DBE firms starting with projects let in January 2025. In the future, MoDOT hopes to expand this system to all subcontractors. Through the Signet software, prime contractors are notified of payments from MoDOT and asked to record subcontract payments. Once recorded, the subcontractors are notified about the payment and asked to confirm receipt of payment and if it was as expected. Each of these actions will have an associated time stamp, which will allow MoDOT to review whether or not prompt payment rules are being followed and address those issues directly with the prime contractor.

Additionally, MoDOT has and will continue the complaint process for any subcontractor that feels they have not been paid in a timely manner. Once the complaint is received, MoDOT project office personnel conduct a review of the work status, payments made to the prime contractor, payments made to the subcontractor, document compliance, and the allegations put forth by the complainant. A written response is prepared and provided to the prime and the subcontractor. The project office will continue to monitor the situation. When the prime submits final payment documentation, if the payment remains outstanding, the justification must be noted as an amendment to the assurance of satisfaction of all claims. If there is no amendment and the claim remains outstanding, the prime will not receive final payment until satisfactory justification has been submitted as an amendment to the final assurance.

All contractors and subcontractors must retain records of all payments, made or received, for 3 years from the date of final payment and must be available for inspection, upon request, by any authorized representative of MoDOT or USDOT. MoDOT will maintain records of actual payments to DBE firms for work committed to at the time of contract award.

26.31 DBE Directory

MoDOT maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The directory lists:

- Firm Name
- Address
- Phone Number
- Firm Website
- NAICS codes firm is certified to perform
- Owner Name(s)
- Certifying Agency
- MoDOT District
- County
- Fax number
- Email Address

The most specific NAICS codes available are assigned to DBE firms at the time of certification and supplemented with specific descriptions of the type(s) of work the firm performs.

The directory is an online system available at this link: [MRCC Directory \(mo.gov\)](https://www.mo.gov/mrcc-directory) and permits the public to search and filter DBE's by:

- Physical location
- NAICS code(s);
- Work descriptions
- Keywords

The directory prominently displays the following disclaimer: "Information is not a guarantee of the DBE's capacity and ability to perform work."

The directory is updated in real time as MoDOT receives new or updated information.

26.33 DBE Overconcentration

MoDOT has not identified that overconcentration exists in the types of work that DBEs perform. MoDOT will continue to monitor DBE participation and usage and will take appropriate action to address any identified overconcentration.

26.35 Mentor Protégé Program

MoDOT has an established Mentor Protégé program in place. Information about the program, including guidelines, sample plans, and application forms, can be found here: [Mentor-Protégé Program | Missouri Department of Transportation \(modot.org\)](https://www.modot.org/mentor-protégé-program)

Within the mentor-protégé program, another DBE or non-DBE firm is a principal source of business development assistance to a DBE firm.

The program is only available to firms that are certified as DBEs at the time of proposed participation in the program.

Within the program, no DBE credit is awarded to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by MoDOT. Additionally, DBE credit is not awarded to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

For purposes of making business size determinations, protégé firms are not considered affiliates of their mentor firms when both are participating under an approved mentor-protégé program.

MoDOT's most recent mentor-protégé program has been approved by FHWA since 12/2022.

26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. The DBE General Provisions lists the remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed or subcontracted to DBEs at contract award is actually performed by the DBEs. This is accomplished by a joint effort between the Business Development & Compliance and the Construction and Materials division. On every USDOT-assisted contract, a Commercially Useful Function (CUF) review is required for all DBE's performing on the contract. A copy of the CUF form can be found here: [CUF Determination Form.pdf](#). CUF reviews are primarily conducted by Construction & Materials Inspectors and reviewed by BDC staff for compliance. In the event of a violation, the BDC division will conduct an investigation of the issue and take necessary corrective action including, but not limited to liquidated damages, disallowing the DBE participation credit and/or removal from the DBE program.
4. MoDOT has implemented a running tally of payments to DBE firms that provides a quarterly comparison of cumulative DBE awards & commitments on DOT-assisted prime contract awards that determines whether our current implementation of contract goals is projected to be sufficient to meet MoDOT's annual goal. This information is published on MoDOT's website: [Percent of Disadvantaged Business Enterprise Participation on Construction and Engineering Projects -7c | Missouri Department of Transportation \(modot.org\)](#). This tracking mechanism informs MoDOT's decisions to implement goals on contracts to be advertised according to our established contract goal-setting process.

5. MoDOT has implemented a running tally of payments with respect to each DBE commitment on projects let in January 2025 and later. The running tally provides real-time information of payments made to DBE's whereby prime contractors report payments made to DBE's and DBE's confirm receipt of the recorded payments. This mechanism allows MoDOT to review what percentage of the DBE goal has been met to date, what percentage of the total contract has been paid to date, and if the contractor is on track to meeting the DBE goal on the contract. This allows MoDOT staff to follow up with contractors where any projected shortfalls exist that requires the prime contractor make good faith efforts in meeting the contract goal pursuant to 49 CFR 26.53(g).

26.39 Small Business Element

MoDOT's current SBE program, approved on August 22, 2012 by FHWA, is part of the Missouri Code of State Regulations:

**Title 7--DEPARTMENT OF TRANSPORTATION
Division 10--Missouri Highways and Transportation Commission
Chapter 8--Disadvantaged Business Enterprise Program**

Section 7 **CSR 10-8.121 (1) (D) MoDOT DBE Program Goals, Contract Goals** addresses the Small Business Enterprise program:

(D) In order to comply with Title 49 CFR section 26.39, the department amends its current DBE program to create the following Small Business Enterprise (SBE) program for USDOT assisted projects:

1. The SBE program will not require SBE goal setting on MoDOT's USDOT assisted projects; however, certified SBEs will be encouraged to participate and certified SBE participation will be tracked, monitored, and reported; and
2. The Small Business Program "Declaration of Certification" form will be utilized by MoDOT as a member of the Missouri Unified Certification Program, also known as the Missouri Regional Certification Committee (MRCC). The "Declaration of Certification" is the document to be utilized by MoDOT to verify interested small businesses' eligibility under Small Business Administration (SBA) regulations, contained in 13 CFR sections 121.101-201 as found in 15 USC 634(b) and incorporated herein by reference, to participate in the SBE Program. This rule does not incorporate any subsequent amendments or additions.

Subpart C: Goals, Good Faith Efforts, and Counting

26.43 Set-asides or Quotas

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

26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found on the MoDOT website: [DBE Program | Missouri Department of Transportation](#)

In accordance with Section 26.45(f) MoDOT will submit its overall goal to DOT on August 1 at three-year intervals, based on schedules established by FHWA, FTA, and FAA. MoDOT may adjust the overall goal during the three-year period to which it applies, in order to reflect changed circumstances. Any such adjustment will be submitted to the concerned operating administration for review and approval. The overall goals submission will include the methodology used to establish the goal and a projection of the portions of the overall goal we expect to meet through race-neutral and race-conscious measures. MoDOT will make adjustments to the overall goal if directed to do so following a review of MoDOT's methodology by an operating administration.

MoDOT may request approval from the concerned operating administration for an interim goal and/or goal-setting mechanism to allow MoDOT additional time to collect data or take other steps to develop an approach to setting overall goals. The interim goal will reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to MoDOT and avoid imposing undue burdens on non-DBEs.

In establishing an overall goal, MoDOT provides for consultation and publication. MoDOT publicizes a notice of proposed goal setting on the Business Development & Compliance webpage, typically including a public meeting where the overall goal will be discussed: [Welcome to Business Development & Compliance | Missouri Department of Transportation \(modot.org\)](#). Additionally, emails are sent to minority, women's and general contractor groups, community organizations, and other stakeholders MoDOT expects to have information concerning the availability of disadvantaged and non-disadvantaged business, the effects of discrimination on opportunities for DBEs, and MoDOT's efforts in establishing a level playing field for DBE participation. The email not only provides an overall goal setting notice but also invites them to attend the public meeting, which may be held in person or virtually.

Once an overall goal is established, a notice announcing the overall goal is published to the MoDOT website: [DBE Program | Missouri Department of Transportation \(modot.org\)](#). We will begin using our overall goal on October 1 of each year in which a new overall goal is established, unless we receive other instructions from a concerned operating administration.

Failing to establish and implement goals as provided in this section places MoDOT in non-compliance.

26.47 Failing to Meet Overall Goals

If the awards and commitments shown on MoDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year MoDOT will take the following actions to show good faith in implementing the DBE program:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems MoDOT identifies in our analysis which enables us to fully meet our goal for the new fiscal year.
3. MoDOT will submit the shortfall analysis to the concerned operating administration within 90 days of the end of the fiscal year for approval.

26.49 Transit Vehicle Manufacturer Goals

MoDOT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section.

Within 30 days of becoming contractually required to procure a transit vehicle, MoDOT will report the following to FTA:

1. The name of the TVM that was the successful bidder; and
2. The Federal share of the contractual commitment at that time.

26.51 Means to meet overall goals

The breakout of estimated race-neutral and race-conscious participation can be found on the MoDOT website: [DBE Program | Missouri Department of Transportation](#).

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

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

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

To ensure MoDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, we will adjust our use of contract goals as follows:

1. If MoDOT's approved projection of meeting the overall goal through race-neutral means estimates that MoDOT can meet the entire overall goal for a given year through race-neutral means, MoDOT will implement its DBE program without setting contracts goals during that year, unless it becomes necessary in order to meet the overall goal.
2. If, during the course of any year in which MoDOT is using contract goals, we determine that MoDOT will exceed the overall goal, we will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If MoDOT determines that we will fall short of the overall goal, then we will make appropriate modifications in our use of race-neutral and/or race-conscious measures to allow us to meet our overall goal.

3. If DBE participation obtained by race-neutral means alone meets or exceeds our overall goals for two consecutive years, we will not make a projection of the amount of the goal we can meet using such means in the next year. MoDOT will not set contract goals on any contracts in the next year. MoDOT will continue using only race-neutral means to meet our overall goals unless and until we do not meet the overall goal for a year.
4. If MoDOT obtains DBE participation that exceeds our overall goal in two consecutive years using contract goals (*i.e.*, not through the use of race-neutral means alone), we will reduce our use of contract goals proportionately in the following year.
5. In any year in which MoDOT projects meeting part of the overall goal through race-neutral means and the remainder through contract goals, we will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. MoDOT will report this data to the concerned operating administration as provided in 26.11.

26.53 Good Faith Efforts Procedures

When MoDOT establishes a DBE contract goal, MoDOT will only award the contract to a bidder/offeror who makes good faith efforts to meet it. MoDOT will make a determination if the bidder/offeror has made good faith efforts if they do either of the following:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. MoDOT will not deny the award of a contract on the basis that the bidder/offeror failed to meet the goal. MoDOT will use Appendix A of 49 CFR 26 for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

MoDOT's solicitations for DOT-assisted contracts for which a contract goal has been established require the bidder's to submit the following information within 3 business days of bid opening:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
5. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation through the submittal of a [DBE Regular Dealer/Distributor Affirmation Form](#).
6. Evidence of good faith efforts if the DBE goal is not met. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by MoDOT that is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Missy Stuedle
Business Development & Compliance Director
P.O. Box 270
Jefferson City, MO 65102
Telephone: (573-526-2978
Email: DBE@modot.mo.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet, virtually or in person, with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

Design Build Open-Ended Performance Plans (OEPP) (26.53(e))

In a design-build procurement, in which MoDOT solicits proposals to design and build a project with minimal project details at time of proposal, any applicable DBE goals must be met by submitting a DBE Open-Ended Performance Plan (OEPP) with the proposal. To be considered responsive, the OEPP must include a commitment to meet 100% of the DBE goals for professional services and construction services through submitting the following information:

1. Types of subcontracting work or services the proposer will solicit DBE's to perform.
2. The estimated percentage of the total contract each work scopes will comprise.
3. Estimated time frame in which DBE subcontracts would be executed.

MoDOT will provide on-going monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. MoDOT and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, as long as the design-builder continues to use good faith efforts to meet the goal.

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

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

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

If the contractor proceeds with a DBE substitution without prior approval, the contractor is deemed ineligible for reimbursement of the items originally committed to the DBE.

26.55 Counting DBE Participation

DBE credit will count toward the contractual goal only for work actually performed by the DBE firm and within the NAICS code approved for that firm. A DBE firm awarded a contract as prime may use their own participation to meet the project DBE goal.

MoDOT will count the entire amount of the portion of the contract that is performed by the DBE's own forces.

Joint Ventures

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

DBE Credit will be counted in the following manner:

- 1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, MoDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
- 2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant MoDOT must examine similar transactions, particularly those in which DBEs do not participate.
- 3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MoDOT will presume that it is not performing a commercially useful function.
- 4) When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. MoDOT will determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(d) Trucking

MoDOT uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- 1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- 2) The DBE must itself own and operate and fully licensed, insured, and operate all trucks used on the contract.
- 3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- 4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- 5) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- 6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- 7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

MoDOT has received approval from FHWA to allow 1:1 trucking for leased trucks. Leases must abide by the rules set out in paragraph 7 above. Credit will not be given for trucks leased by the DBE firm from the prime contractor. This type of relationship will be subject to strict scrutiny.

For trucking firms, MoDOT requires submittal of the DBE's Quarterly Wage Report and an updated truck roster each quarter. BDC staff will use this information at time of closeout to determine the appropriate credit to count towards DBE goal attainment.

A DBE trucker may not count the cost of materials/supplies hauled unless the firm has a supplier NAICS Code. In that case, credit will be counted in accordance with the DBE's performance as outlined in the below supplier categories.

(e)(1) Manufacturers

MoDOT will count the cost of materials produced by a DBE manufacturer at 100 percent. Manufacturers must own (or lease) and operate a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. Minor modifications to the materials, supplies, articles, or equipment does not count. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

(e)(2) Regular Dealers

MoDOT will count 60 percent of the cost of materials or supplies, including transportation costs, purchased from a DBE regular dealer. Regular dealers own (or lease) and operate a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public. MoDOT will count regular dealer credit when all, or at least 51 percent of the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources.

MoDOT will also count regular dealers of bulk items such as petroleum products, steel, concrete, or concrete products, gravel, stone, or asphalt without owning and operating a place of business if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease.

Regular dealers of items that are not typically stocked due to their unique characteristics such as limited shelf life or items ordered to specification, are considered in the same manner as bulk items, including owning/leasing distribution equipment.

MoDOT has established a system to determine that a DBE regular dealer keeps sufficient quantities and regularly sells the items in question. This system consists of regular on-site reviews to verify equipment, inventory, and facilities. This system includes collaboration amongst MRCC partners, including sharing information across agencies.

(e)(3) Distributors

MoDOT will count 40 percent of the cost of materials or supplies, including transportation costs, purchased from a DBE distributor. A DBE distributor is an established business that engages in the regular sale or lease of the items specified in the contract. They assume responsibility for the items purchased once they leave the point of origin, making it liable for any loss or damage not covered by the carrier's insurance. The distributor must demonstrate ownership of the items in question and assume all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading from a third party, indicating Free on Board at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. Terms that transfer liability to the distributor at the delivery destination (FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(e)(4) Brokers

MoDOT will count 100 percent of the fees or commissions, including transportation charges for the delivery of materials or supplies that are arranged by a DBE broker. This DBE does not act as a manufacturer, a regular dealer, nor a distributor. The cost of the materials themselves do not count towards DBE credit.

MoDOT will determine the credit allowed based on the DBE performing the work, the DBE's certification status, and how they executed the performance of the work through preliminary counting as well as commercially useful function reviews throughout the project duration.

Subpart D: Certification Standards

26.61 – 26.73 Certification Process

MoDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact the Business Development & Compliance division at: 573-526-2978 or by email at: DBE@modot.mo.gov. Application information may also be found on the BDC webpage: [DBE Program | Missouri Department of Transportation \(modot.org\)](#).

Subpart E: Certification Procedures

26.81 Unified Certification Programs

MoDOT is a member of a Unified Certification Program (UCP administered by the Missouri Regional Certification Committee. The UCP will meet all of the requirements of this section. The following is a description of the UCP:

The Missouri Regional Certification Committee was established in 2004 and is comprised of the following agencies:

Lead Agency: Missouri Department of Transportation
City of St. Louis/Lambert Airport Authority
Bi-State Development
Kansas City Area Transportation Authority
City of Kansas City, Missouri
Mid-America Regional Council

The MRCC works collaboratively to ensure a unified DBE certification process throughout Missouri within the transportation industry. The MRCC meets six times a year to conduct business and once a year for group training.

26.83 Procedures for Certification Decisions

Certification Determinations 26.83(c)

MoDOT will take all necessary steps to determine whether a DBE firm meets the standards of Subpart D.

MoDOT will inform the DBE applicant within 15 days of receiving the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

An on-site visit will be scheduled 45 days after receipt of a complete DBE application at the firm's principal place of business where the SEDO, officers, and key personnel are interviewed as well as a review of their resume's and/or work histories. The interview will be conducted either in person or virtually, depending on the type of business. The interview will be recorded, with the SEDO and any other personnel present signing a "Consent to Record" form prior to the interview. Non-consent of a recording shall deem the application non-responsive, and the firm denied on grounds of failure to cooperate pursuant to 49 CFR 26.109(c).

MoDOT will obtain all documents and information as outlined in 26.83(c)(1)(ii-viii).

MoDOT will use the DBE application form available at: <https://transportation.gov/DBEFORMS>. MoDOT has made minor modifications to the application for ease of use, which were approved on 07/31/2024 by the FHWA Missouri division office.

MoDOT will ensure that the SEDO signs the Declaration of Eligibility at the end of the Uniform Certification Application (UCA), subscribed to as true under penalty of perjury that all information provided is current, accurate, and complete.

Requests from other certifiers 26.83(d)

MoDOT will promptly respond to requests for certification information from other certifiers in connection with their consideration of a DBE firm's eligibility.

DBE Application Fees 26.83(f)

MoDOT does not charge fees for DBE certification applications.

Disclosure 26.83(g)

MoDOT will safeguard all information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information to unauthorized persons.

Continuing DBE Eligibility 26.83(h) & (j)

Once a firm becomes certified by MoDOT, they will remain certified unless MoDOT moves to remove their certification, in whole or in part in accordance with 26.87. MoDOT will not require DBE firms to reapply for certification, renew certification, undergo a recertification, or impose any functionally equivalent requirement. However, MoDOT will conduct a certification review every 5 years for all DBE firms based in Missouri, including a new OSR. MoDOT may conduct a certification review at a shorter interval due to changed circumstances of the firm or new information. MoDOT reserves the right to

make unannounced visits to the DBE's offices and/or job site. MoDOT will rely on other certifier's OSR reports for out of state firms.

Every year on the anniversary of its original certification, MoDOT will request a new DOE and documentation of gross receipts for its most recently completed fiscal year. Gross receipts documentation may include: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed.

Certification Determinations 26.83(l)

MoDOT will render a final eligibility decision within 90 days of receiving all information required from the applicant. MoDOT may extend this time period once, for no more than an additional 30 days. MoDOT will give written notice to the firm, explaining fully and specifically the reasons for the extension.

Curative Measures 26.83(m)

MoDOT may notify applicants about ineligibility concerns and allow the firm to rectify deficiencies during application review. If a firm takes curative measures prior to MoDOT's decision, MoDOT will consider any evidence it submits regarding these measures. Curative measures may include, but is not limited to:

- Obtaining proof of investment, transaction, or other fact on which its eligibility depends.
- The owner or related party may create a legally enforceable document of irrevocable transfer to the SEDO.
- Amendments to the firm's operating agreement, bylaw provision, or other governance document as long as the amendment accurately reflects the parties' relationships, powers, responsibilities, and other pertinent circumstances.

DBE application withdrawal 26.83(n)

If an applicant for DBE certification withdraws its application before MoDOT issues a decision, the applicant can resubmit the application at any time. MoDOT may impose a waiting period to a firm that has established a pattern of withdrawing applications before its decision. MoDOT will inform applicants of their right to withdraw an application if the necessary documentation or curative measures cannot be obtained or made within the 90-day certification review window.

26.85 Interstate Certification

MoDOT will require the following information from DBE applicants based in states outside of Missouri:

- 1) A cover letter that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it).
- 2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and
- 3) A new DOE.

Within 10 business days of receiving all 3 complete and signed documents listed above, MoDOT will grant DBE certification to the firm, including listing the firm on the MRCC directory and sending a letter to the applicant with the certification acceptance.

Following certification, MoDOT will request the following information from the JOC:

- Most recent annual approval letter
- Approval letter of original certification
- Most recent equipment list – titles, list, loan agreement, cab cards (if applicable)
- Most recent on-site report review
- Initial contribution
- W3's or other documentation showing yearly number of employees- if any
- Last 5 years of Gross Receipts for the firm (documentation examples include federal business tax returns -signed or proof of electronic filing submission, filed audited financial statements to include the Certified Public Accountants (CPA's) signed attestation of correctness and completeness, etc. This includes providing said documents for all affiliates).

26.86 Decision Letters

When MoDOT denies a firm certification or decertifies a firm, MoDOT will provide the firm a Notice of Decision (NOD), explaining the reasons for the adverse decision with specific references to the evidence in the record that supports each reason. The NOD will also include the firm's appeal options, as written here: <https://www.transportation.gov/dbeappeal>.

Upon request, denied and decertified firms will be provided copies of all documents and other information on which MoDOT based the denial or decertification.

Firms denied DBE certification or DBE firms that are decertified may not reapply for a period of 12 months following the date of the NOD.

26.87 Decertification

In the event that MoDOT proposes to remove a DBE's certification, we will follow procedures consistent with 26.87.

MoDOT's first step in initiating decertification will be a Notice of Intent (NOI) sent to the DBE firm. The NOI will include all requirements as stated in 26.87(c). MoDOT will accept a DBE firm's response to the NOI as outlined in 26.87(d).

MoDOT will provide DBE firms an opportunity for a hearing to present its case and rebut NOI allegations. The hearing is informal, with all rules set forth in the [MRCC Policy](#). MoDOT will maintain a complete written record of the hearing made available to the DOT and to the DBE in cases of an appeal. As outlined in the MRCC Policy, the decertification decision will be made by a majority vote of the hearing committee, which excludes the certifying agency bringing the decertification.

Following the informal hearing, the hearing officer will issue a Notice of Decision (NOD) within 30 days and include all requirements as set forth in 26.87(d).

Within 5 days of the NOD, MoDOT will make an entry into DOCR's Online Portal with the name of the firm, owner name(s), decision date, and reason(s) for the decision.

Following a firm's decertification, MoDOT will follow the counting rules for overall and contract goals as outlined in 26.87(j).

26.88 Summary suspension of certification.

MoDOT will issue summary suspension to firms when we have clear and credible evidence of the DBE's or SEDO's involvement in fraud or other serious criminal activity. MoDOT will also summarily suspend a firm's DBE certification if an OA with oversight so directs MoDOT.

MoDOT may, at its discretion, summarily suspend a DBE's certification if we have clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity.

MoDOT will not summarily suspend a DBE's certification for failure to cooperate in submitting their annual declaration and gross receipts documentation. In these instances, MoDOT will proceed with decertification proceedings as outlined in 26.87, after providing the firm with three different opportunities to submit the information. Suspension in this particular circumstance creates multiple windows of time where a DBE firm's participation does and does not count towards contract goals. For that reason, summary suspensions will not be used in this manner.

MoDOT will follow all procedures for summary suspension as outlined in 26.88(d).

26.91 Certifier Actions following DOT certification appeal decisions.

Any complainant may appeal MoDOT's decision in a certification matter to DOT. Such appeals may be sent to: DBEAppeals@dot.gov.

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

Subpart F: Compliance and Enforcement

26.109 Information, Confidentiality, Cooperation

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

Notwithstanding any contrary provisions of state or local law, the identity of complainants shall be kept confidential, at their election. MoDOT will advise complainants if this confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. MoDOT will also advise complainants that in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

MoDOT will also fully cooperate with USDOT, and OAs, in a complaint investigation, compliance review, or any inquiries in MoDOT's DBE Program.

MoDOT will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege because the individual has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing.