



**PennDOT Mentor Protégé Program
Program Guide
Updated September 21, 2023**

**PennDOT Mentor Protégé Program
Program Guide
Updated January 27, 2023**

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A. Purpose & Goals

The Pennsylvania Department of Transportation (PennDOT) has created a Mentor Protégé Program (the MPP or Program) to increase diversity and participation in the Disadvantaged Business Enterprise (DBE) Program through outreach to underserved and underrepresented companies. The creation of the MPP directly addresses PennDOT's 2018 Disparity Study findings. These include the following:

- The disparity analysis results by individual racial/ethnic and gender group indicated that the only group to show a disparity was Black American-owned businesses. For example, the disparity index indicates that these businesses received only \$0.88 for every one dollar that they might be expected to receive based on their availability for the study period.
- All groups showed significant disparities on prime contracts.

Per 49 CFR Part 26, Appendix D Mentor-Protégé Program Guidelines:

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms.

The Program seeks to increase opportunities for DBEs in both the consultant and construction markets and to level the contracting playing field.

In creating the Program, PennDOT sought input from both the consultant and construction industries.

Goals provided by the consultant industry include:

- Provide an avenue to connect experienced PennDOT consultants with new and underutilized DBEs to assist with building or expanding their experience in the industry, including assisting them to move into non-traditional areas of consultation work;
- Empower Prime consultants (DBE or Non-DBE) to transfer knowledge through the project development process on active projects to help new and underutilized DBE firms grow to become self-sufficient and long-term business partners; and
- Grow teaming relationships to include more underrepresented firms to improve participation and eradicate barriers to opportunities.

Goals provided by the construction industry:

- Further develop new and underutilized DBEs in the construction industry;
- Provide a more formal mechanism for technical assistance exchange between Prime contractors and new and underutilized DBEs; and

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- Help proteges obtain additional pre-qualification work codes and increase capabilities.

B. Eligibility

Proteges – The Program is open to all DBEs certified via the Pennsylvania Unified Certification Program (PA UCP). To bid on projects, the PA UCP certified DBE must become registered as a PennDOT Business Partner (BP) during the Program and obtain active qualifications package in PennDOT’s Engineering and Construction Management System (ECMS). ECMS is PennDOT’s electronic system for solicitation and management of consultant and construction contracts. Protégés that are exploring new market expansion for new disciplines may also apply. PennDOT’s provisional or conditional qualifications may apply in certain circumstances.

Mentors – As it relates to the consultant industry, all firms eligible to submit Statements of Interest (SOIs) through ECMS can serve as mentors. Accordingly, mentors will be experienced Prime- or Sub-consultant firms registered as PennDOT BPs with an active qualifications package in ECMS. Mentors will include established professional transportation engineering, environmental, planning, or related firms in Pennsylvania with a history of successful project delivery. DBE mentors are welcome and encouraged.

As it relates to the construction industry, the Program will utilize experienced project based Prime- and Sub- contractors who can assist DBEs in further developing pre-qualifications, in addition to other non project based mentors hired through consulting support services. All contractors are eligible to bid on a contract with PennDOT’s DBE Mentor Protégé Special Provision. Thus, all contractors are eligible to mentor protégés through PennDOT’s DBE Mentor Protégé Special Provision described within. Mentoring for the construction industry is offered in various forms, including networking, training, and hands-on training, in addition to project experience. Support services assist the protege to move into non-traditional areas of work and/or gain the skills and experience necessary to compete in the marketplace outside the DBE program, via the provision of training and assistance. Prime contractors will be utilized to train DBEs with the intent to obtain additional pre-qualification work codes.

For contractors, a provisional specification, referred to herein as the PennDOT DBE Mentor Protégé Special Provision (**Attachment D**), was developed to provide for line-item reimbursement for the mentor's services provided, and any associated costs that must be directly attributable and properly allowable to specific individual contracts. PennDOT will utilize state funding to provide hands-on mentoring. For consultants, both the mentor and protégé are eligible to invoice PennDOT monthly through the ECMS consultant agreement. Total payment cannot exceed two percent (2%) of the total ECMS Agreement Price Proposal hours. The invoice(s) must include a completed MPP Activity Invoicing Log form (**Attachment F**), which is to document satisfactory performance.

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Additional protégé and mentor federal eligibility requirements are included in **Attachment A**, which details pertinent sections of 49 CFR Part 26.

C. Success Measures

Progress of the program will be measured by the following factors:

Consultant Industry

- Increase in number and dollar of underutilized DBEs utilized on a contract
- Increase number of PennDOT agreements advertised with MPP teaming option
- Increase number of new DBEs participating
- Increase total dollars invoiced by protégé firms
- Increase number of DBE consultants who participate that request NAICS code expansions and add services to the firm's qualifications package
- Positive *Annual Mentor Protégé Survey* in areas such as:
 - Learning progress: Mentor meets the goals of the MPP development plan.
 - Reciprocity: Both mentor and protégé gain from the relationship
 - Mutual Respect: Both parties respect each other's time, effort, and qualifications
 - Clear Expectations: Both worked together to actively manage the relationship
 - Overall rating: Would work together again on other projects

Construction Industry

- Increase in underutilized DBEs being used on contracts
- Increase number of new DBEs participating in the Program
- Increase the number of pre-qualification codes attained by each DBE
- Pre- and Post-Program Survey of DBEs
- Positive *Annual Mentor Protégé Survey* in areas such as:
 - Learning progress: Mentor meets the goals of the MPP development plan.
 - Reciprocity: Both Mentor and Protégé gain from the relationship
 - Mutual Respect: Both parties respect each other's time, effort, and qualifications
 - Clear Expectations: Both worked together to actively manage the relationship
 - Overall rating: Would work together again on other projects

D. Roles & Responsibilities

PennDOT: Mentor Protégé Program sponsor responsible for establishing the Program framework, promoting the Program, monitoring progress, providing outcomes to the Operating Administration, and identifying projects for the MPP. This includes approving MPP development plans in which the mentor and the protégé may propose the sharing of equipment or services.

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American Council of Engineering Companies of Pennsylvania (ACEC/PA): Mentor Protégé Program consultant industry partner responsible for supporting networking events and assisting in promoting the Program to members.

Associated Pennsylvania Constructors (APC): Mentor Protégé Program construction industry partner responsible for supporting networking events and assisting in promoting the Program to members.

PennDOT Mentor Protege Support Services Center (MPPSSC): Is the Program Administrator responsible for:

- Establishing website [<https://penndbe.prorankllc.com/mentor-protege-program/>] for Program promotions and online portal to share profiles of Mentors and Protégés;
- Administering the classroom/virtual training;
- Providing a searchable database;
- Organizing online meeting rooms/chat rooms;
- Coordinating/preparing networking events in collaboration with the industry;
- Conducting market research on underserved/underrepresented group associations to market for new potential DBEs;
- Preparing several templates mentioned throughout this Program Guide, including:
 - *Mentor Readiness Application*
 - *Protégé Readiness Application*
 - *Annual Mentor Protégé Survey*
 - Report templates (annual, quarterly, close out)
- Organizing quarterly committee meeting, developing quarterly reports and an overall Program Annual Report.

*MPPSSC services currently contracted through ProRank Business Solutions, LLC

Mentor: For the consultant community, the mentor will enter into a Memorandum of Understanding (MOU) with the protégé. The MOU templates can be found at <https://www.prorankacademy.com/resource-page/>. The mentor will maintain a work plan to ensure and document satisfactory performance by the protégé. The MOU and work plan need approved by PennDOT prior to services beginning. More detailed roles and responsibilities are illustrated within the following section, Program Framework.

For the construction community, the protégé firm is being mentored by the Prime contractor. As noted previously, this relationship occurs using PennDOT's DBE Mentor Protégé Special Provision.

Protégé: The protégé will complete a *Protégé Readiness Application*, participate in classroom training. The protégé will also enter into a Memorandum of Understanding (MOU) with a Mentor and complete a development plan in coordination with their mentor prior to services beginning. The development plan

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templates can be found at <https://www.prorankacademy.com/resource-page/>.

E. Program Framework

The MPP is a multifaceted approach that includes various forms of virtual classroom training, one-on-one interactions and networking and project-based partnering with contract-based pay line items on specified PennDOT design and construction ECMS projects. The Program has been developed in three (3) phases. Phases 1 and 2 will be administered through the PennDOT MPPSSC. Phase 3 will include project work administered through ECMS. All Program details are housed on a dedicated MPP webpage [<https://penndbe.prorankllc.com/mentor-protege-program/>], on ProRank Academy, an interactive virtual platform. This website and platform are provided through the MPPSSC at *PENNDBE.com*.

The MPP will develop DBE firms through several types of training provided through ProRank Academy, and through project design and construction work. There are various levels of training and mentoring in this program and by providing an interactive virtual classroom setting, this allows for an efficient planning strategy for business owners and work schedules. The first level would be completed through virtual training at the MPP Supportive Services Center and the second level would be completed through MPP training. One such collaborative training, the consultant SOI process, includes several delineated tasks that are learned by the Protégé in a virtual training in Phase 1 through the MPPSSC. The details of developing and submitting an SOI for PennDOT includes the creation of checklists and processes to ensure proper compliance with PennDOT's procedures will be provided through the MPP Phase 2 training.

Through research of other states' Mentor Protégé programs, a key component of success shows that the creation of a training plan collaboratively between the team will lead to more successful outcomes. Teams will consist of the mentor, protégé and PennDOT. In the initial teaming process, program participants will discuss and establish at least three (3) goals to work toward and review during formal meeting sessions outside the hands-on coordination of work performed jointly. These goals may include items such as adding a new work code experience, completion of certain tasks at a level greater than satisfactory performance, or the implementation of financial and management processes.

PennDOT chose to partner with its DBE Supportive Services Center due to the Center's mission to provide the training, technical assistance, and business development services to DBE firms to enable them to acquire the proficiency, experience, and expertise necessary to compete on an equal basis, with non-DBE firms for federally assisted PennDOT contracts and subcontracts. A Mentor Protégé program will elevate this mission. The MPPSSC will administer, document, and track the success of the training

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plans between the mentors and proteges. PennDOT provides the MPPSSC through a contract with ProRank Business Solutions Services LLC.

PennDOT is also providing technical support for the Program to supplement any engineering experience that the MPPSSC may not have, through a consultant agreement funded with state dollars.

Phase 1 (Both Consultant and Construction firms) – Virtual Classroom Training

As previously noted, the Mentor Protégé Program has its own [website](#). This site contains the eligibility applications and more detailed instructions on the process and training resources.

Protégés are required to submit a *Protégé Readiness Application* to the MPPSSC to determine what classroom training may benefit the protégé. The application will be used to determine appropriate classroom training needs and be used to help pair the protégé with a mentor(s) in subsequent phases. Classroom training is provided at no charge to the protégé firm.

The protégé will be reimbursed by the MPPSSC for up to 40 hours of classroom training at a rate not to exceed \$80/ hour. Travel costs are eligible reimbursed at federal criteria. PennDOT will reimburse the MPPSSC for the pass-through costs using the existing DBE University reimbursement model.

Payment Milestone

The MPPSSC will reimburse the protégé for the up to 40 hours following completion of required training identified by the *Protégé Readiness Application*.

Phase 2 (Consultant firms) - Preparing to Work Together

For the consultant community, MPPSSC will facilitate the pairing process by adding the protégé firm to the MPP online portal and searchable database, setting up networking events and online meetups, and providing support to encourage eligible firms to connect. This ensures mentors and protégés have the tools needed to connect, including working together with PennDOT, ACEC/PA and APC to convene networking events to facilitate the pairing of mentors and protégés. It is then up to the mentor and protégé firms to make any teaming arrangements.

Consultant mentor firms are also required to apply to the MPPSSC to assess which disciplines are appropriate for mentoring based on experience, key personnel, and past record of performance. The MPPSSC will coordinate with PennDOT to confirm eligibility. Once approved, the MPPSSC will use the information provided in the application to add the firm profile to the online portal, which includes details on the disciplines on which the mentor is qualified to offer training.

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Phase 2 includes preparing for the actual process of bidding on PennDOT ECMS projects as a team. Prior to conducting technical services on a project, mentors and protégés enter into an MOU, to confirm the commitment to work together on the project, specify the work to be performed, establish a development plan, and agree to confidentiality terms. Per 49 CFR Part 26, Appendix D, Section B(1), *“Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement.”*

The MOU is submitted to the MPPSSC for review and approval by PennDOT to ensure the assistance to be provided promotes real gains to the protégé. Working through the MOU process in advance of the project submission allows the mentor and protégé firms to confirm they are the right match and through the process develop a collaborative relationship that leads to a more meaningful knowledge transfer process and assignment of responsibilities. The protégé firm is permitted to provide Subconsultant services to other firms in the pursuit of the same project so long as it is in accordance with **Attachment A**.

As part of formal monthly meetings, the mentor protégé team will review progress toward these goals, which will also serve as milestones in the progress reporting required for program participants. As each MPP relationship will have unique goals, there will not be a one-size-fits-all requirement for this training beyond establishing, working toward, and reporting on the goals jointly developed. This approach fosters regular communication among the participants and requires accountability in the form of documented agreement of goals and quarterly reporting of progress.

Consultant Mentor Roles and Responsibilities

- Must have an active and approved ECMS Consultant Qualifications Package;
- Must have a positive record of performance as a PennDOT consultant for at least five (5) years based on Consultant Evaluations or references;
- Leads the development of the MOU, including:
 - Documents commitment to create a development plan scope and capacity to provide meaningful instruction and beneficial resources to its Protégé as documented in a signed MOU; and
 - Creates a protégé development plan as the part of the MOU; and
- Agrees to a regular coordination schedule and/or minimum number of hours per month on average to work with the protégé.

Mentor Protégé work is eligible toward the overall DBE goal of the advertised project in accordance with **Attachment A**.

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Payment Milestone

No payments are made to either the mentor or the protégé in this Phase

Phase 2 (Construction firms) - Preparing to Work Together

Participating contractors are automatically registered for the MPP website upon completion of their MPP questionnaire to facilitate the beginning of the networking process. This website provides a searchable database of DBEs and contractors looking to partner with DBEs, as well as specific projects with mentor protégé opportunities. The MPPSSC uses the PAUCP DBE Directory for the most accurate and up-to-date listing of DBEs. It also utilizes PennDOT's listing of Business Partner registered contractors in ECMS.

Phase 3 (Consultant firms) - Agreements

PennDOT will identify design projects that will include a Mentor Protégé WBS Code pay line item. Consultant protégés must be a PennDOT registered BP and have an active and approved ECMS Consultant Qualifications Package, which includes having an approved overhead rate. Consultant protégés must be PAUCP certified DBEs in the NAICS for the work being completed.

Conflict of Interest and Adverse Interest are outlined in PennDOT's Publication 93, *Policy and Procedures for the Administration of Consultant Agreements*. Chapter 5.4 includes detailed information on DBE participation and certification, monitoring of DBEs and NAICS Codes.

[\[https://www.dot.state.pa.us/public/PubsForms/Publications/PUB%2093.pdf\]](https://www.dot.state.pa.us/public/PubsForms/Publications/PUB%2093.pdf)

Payment Milestone

The mentor and protégé are required to develop a mentor protégé development plan. Both the mentor and protégé are eligible to invoice PennDOT monthly through the ECMS consultant agreement. Total payment cannot exceed two percent (2%) of the total ECMS Agreement Price Proposal hours. The invoice(s) must include a completed MPP Activity Invoicing Log form (**Attachment F**), which is to document satisfactory performance.

Phase 3 (Construction firms) - Projects

For direct in the field construction experience, PennDOT will include an ECMS contract DBE Mentor Protégé Specification either as part of the advertisement or via force account on certain projects as pay line item to Prime contractors who will serve as a mentor and help DBE subcontractors receive pre-qualification codes. Primes may choose to pay their DBE sub contractors as part of the funding described below. To be eligible, the mentor and protégé must enter into an MOU. The pay line item is a pre-determined maximum amount of \$25,000. Per PennDOT's DBE Mentor Protégé Special Provision (**Attachment D**), *"Prime Contractor paid for the documented cost of actual expenses reasonably incurred, directly attributable to, and allowable under the contract for mentoring one DBE*

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Subcontractor up to a maximum \$25,000.” Publication 408: Construction Specification, Designated Special Provision-7 Disadvantaged Business Enterprise (DBE) For Federally Funded Construction Projects details PennDOT’s procedures on DBE participation, monitoring, reporting and compliance. (**Attachment B**).

Criteria for Participation: Construction protégés must be registered BP in ECMS and, per state regulation, must have one (1) provisional pre-qualification code to bid on project as a sub-contractor. Construction protégés must be PA UCP certified in the NAICS for the work being completed.

Payment Milestone:

The mechanism for a protégé to expand its eligibility for PennDOT work is the Provisional Prequalification Program. It is worth noting that receiving additional pre-qualification codes can also be accomplished on ECMS projects that do not include the DBE Mentor Protégé Special Provision. Therefore, the general process from provisional pre-qualification to the regular assignment of a work classification code is summarized as follows:

1. Protégé sends a letter to Prime contractor that expresses its intent to expand its eligibility for PennDOT work in a specified area.
2. Prime contractor sends a formal provisional pre-qualification request to the Prequalification Office (PO) that identifies one of its projects that include the protégé’s specified area of work interest.
3. The PO reviews the provisional pre-qualification request, and the Contract Management Division Chief approves the provisional pre-qualification request.
4. During construction, the Prime contractor provides necessary training and oversight; the protégé self-performs the work while satisfying the Commercially Useful Function (CUF) requirements; and District personnel witness, inspect, and evaluate the protégé’s performance.
5. Upon successful completion of sufficient projects in the protégé’s specified area of work interest, the protégé sends a formal request for additional codes to the PO. The number of projects is dependent on the type of work, quantity or work, scope or work and independent 3rd party verification or the work.
6. The PO reviews and approves the additional codes request (i.e., regular assignment of the work classification code).

This process has been summarized at a high-level. Payment for work using the DBE Mentor Protégé Special Provision will occur as services are rendered using the Mentor Protégé Program Activity Invoicing Log form (**Attachment F**), which is to document satisfactory performance, as part of submitting an invoice(s) to PennDOT through ECMS.

F. Development Plans

The following Regulations and Policy are included within:

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- **Attachment A**, Federal Mentor Protégé Program Requirements
- **Attachment B**, Form DSP7, Designated Special Provision 7, DBE Requirements for Construction

Mentor and Protégé teams may propose equity in the form of sharing equipment or services, which will further develop the protégé firm by submittal to and approval by PennDOT. For example, to receive pre-qualification work codes, by regulation, the applicant needs to demonstrate prior experience and access to appropriate equipment. It would be acceptable for a protégé to utilize a Prime contractor's equipment to unload material, such as rebar, because equipment is not necessary for the installation of rebar. However, a protégé that will be installing bridge beams would be expected to hire a crane service as a 2nd-tier subcontractor because the hiring of a crane service is typically integral to the installation of bridge beams. For this example, a protégé would not be expected to purchase or lease a crane.

As described in Phase 2 above, consultant and construction mentor protégé teams can propose, through use of a signed agreement (the MOU) at the onset of the mentor-protégé partnership, the use of a particular work item needed for training. Approval must be documented prior to start of the services. As part of the work development plan, the mentor protégé team must include for what projects and what duration any equipment or other means of equity is being shared. PennDOT approval is required, and the MPPSSC will maintain documentation on file for auditing purposes. This documentation will also be included as part of quarterly and annual reporting processes. PennDOT will record exemptions before services begin and will review these exemptions annually with FHWA.

G. Contact Information

855-776-7265 or by email at MPP@prorankllc.com.

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**Attachment A
Federal Mentor Protégé Program Requirements**

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided, and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

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**Attachment B
Appendix C of Pub 408- - Designated Special Provision 7 (DSP7)**

[408_2020_DSP7.pdf](#)

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Appendix C – Designated Special Provision 7 (DSP7)

408/2020

**APPENDIX C
DESIGNATED SPECIAL PROVISION 7 (DSP7)**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS
For Federally-Funded Construction Projects**

NOTE: Requires special provision for participation DBE goal percentage.

I. DBE GOAL—

The Department has established, in connection with this contract, a DBE goal as specified in the proposal of the original contract amount for the utilization of firms owned and controlled by socially and economically disadvantaged individuals certified as DBEs. If the DBE goal is zero, make an effort to identify and use DBEs. This DBE goal remains in effect for the life of the project.

Include the following provisions (paragraphs a through d) in every subcontract, so that such provisions will be binding not only upon the prime contractor but also upon each subcontractor, supplier, service provider or consultant.

- (a) **Policy for Federally-Funded Projects.** It is the policy of the U.S. Department of Transportation (DOT) and the Department that DBEs, as defined in 49 CFR Part 26, as amended, (Part 26) and this specification, be given the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of Part 26, as amended, apply to this contract.
- (b) **DBE Obligation.** Take all necessary and reasonable steps to ensure that all DBEs have the opportunity to compete for and perform contracts. Do not discriminate on the basis of race, color, national origin, or sex in the award and performance of PennDOT and DOT-assisted contracts.
- (c) **Failure to Comply with DBE Requirements.** Failure to carry out the requirements as specified constitutes a breach of contract and may result in termination of the contract, being barred from bidding on Department contracts for up to three (3) years, withholding progress payments, assessing sanctions, assessing liquidated damages, or any other remedy that the Department deems appropriate. Failure to comply with DBE requirements may include, but is not limited to, failure to submit DBE Minority Participation and Commitment within the time period specified, failure to exert a reasonable Good Faith Effort to meet the established DBE goal, or failure to realize the approved DBE participation level set forth may result in the bidder being declared ineligible for the contract.
- (d) **Small Business Enterprise (SBE) Participation.** Recruitment and utilization of certified SBEs is in addition to all other equal opportunity requirements of the contract. There is no SBE goal.

II. DEFINITIONS—

The following definitions apply for terms used in this specification:

- (a) **Disadvantaged Business Enterprise (DBE).** A for-profit small business concern:
 - 1. An entity certified by the Pennsylvania Unified Certification Program (PAUCP) as listed on www.paucp.com.
 - 2. That meets the ownership and control requirements of the DBE certification program.
 - 3. That meets the Personal Net Worth requirements of the DBE certification program.
- (b) **Small Business Enterprise (SBE).** A for-profit small business concern:
 - 1. An entity certified by the PennDOT as listed on www.dotsbe.pa.gov.
 - 2. That meets the ownership and control requirements of the Small Business Element (SBE) certification

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- program.
3. That meets the Personal Net Worth requirements of the SBE certification program.
- (c) **Commercially Useful Function.** A DBE performs a Commercially Useful Function (CUF) 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 CUF, 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, installing (where applicable), and paying for the material itself.
- (d) **Interdisciplinary Review Team (IRT).** A team of three representing both the Bureau of Equal Opportunity and the Bureau of Project Delivery (Contract Management Section) that performs the initial review of the Good Faith Effort documentation and makes the recommendation to the Director.
- (e) **Committee.** The Good Faith Effort Review Committee.
- (f) **Days.** Calendar days. In computing any period of time described in this specification, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or state holiday, the period extends to the next day that is not a Saturday, Sunday, or state holiday. Similarly, in circumstances where the PennDOT offices are closed for all or part of the last day, the period extends to the next day on which the PennDOT offices are open.
- (g) **Director.** Director, Bureau of Equal Opportunity.
- (h) **DBE Participation.** Minority Participation and Commitment that is accessed by the Department's ECMS website (www.dot14.state.pa.us/ECMS).
- (i) **Revised DBE Participation.** Minority Participation and Commitment that is accessed by the Department's ECMS website which includes new DBE firm(s) as well as those not affected by the revision.
- (j) **Supplier.** A manufacturer, regular dealer, or transaction expeditor/broker.
1. **Manufacturer.** A DBE/SBE that operates or maintains 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.
 2. **Regular Dealer.** A DBE/SBE that owns, operates, or maintains 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 stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Whether a DBE/SBE firm meets the criteria for being treated as a regular dealer is a contract-by-contract determination to be made by the Department.
 3. **Transaction Expeditor/Broker.** A DBE/SBE packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.
- (k) **Service Provider.** A DBE/SBE that performs work that does not have a prequalification requirement on a project.
- (l) **Shortfall.** The difference between the dollar amount on the approved DBE commitment in ECMS and the amount of payments to the approved DBE entities as listed in ECMS.

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III. COUNTING PARTICIPATION—

COUNTING DBE PARTICIPATION TOWARD THE DBE GOAL

Utilization of certified DBEs is in addition to all other equal opportunity requirements of the contract.

Count DBE participation toward meeting the DBE goal for federal projects as follows: If a firm is a certified DBE contractor or subcontractor at the time that submission of DBE Minority Participation and Commitment documents are due, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal as provided below. Any services to be performed by a DBE are required to be readily identifiable to the project.

(a) Construction.

- 1. Prime Contractor.** The Department requires that all prime contractors including DBE prime contractors perform at least 50% of the work on a Department project. A DBE prime contractor will receive credit for all work performed with its own forces. The Department strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.
- 2. Subcontractor.** When a DBE participates in a contract directly as a subcontractor or as a second-tier or lower-tier subcontractor, count only the value of the work actually performed by the DBE.

Count the entire amount of that portion of a construction contract that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the subcontract, including supplies purchased or equipment leased by the DBE.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count.

Count expenditures to a DBE contractor only if the DBE is performing a CUF on that contract.

Count expenditures to a DBE only if the DBE is certified at the time the Subcontractor Request has been approved.

(b) Materials and Supplies.

- 1. DBE Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies.
- 2. DBE Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies. There is no North American Industry Classification System (NAICS) code for regular dealer.
- 3. DBE Transaction Expeditor/Broker.** If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves.

- (c) Service Providers.** Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance the contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

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- (d) **Trucking Firms.** Count 100% of trucking costs using the following factors to determine what can be counted:
1. Count if the DBE is 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. Count if the DBE owns and operates at least one fully licensed, insured, and operational truck used on the contract.
 3. Count the total value of the transportation services the DBE 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 a certified DBE. If the DBE leases trucks from another DBE, count the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. If the DBE leases trucks from a non-DBE firm and the DBE operates these leased trucks (with its own forces), count the total value of the transportation services the lessee non-DBE provides on the contract. If the DBE leases trucks from a non-DBE owner-operator, count only the fee or commission it paid as a result of the lease arrangement. Do not count the total value of the transportation services provided by the lessee (non-DBE owner-operator), since these services are not provided by a DBE.
 6. For purposes of this provision, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used for work 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.
- (e) **Specialty Items.** In cases where specialty items and DBE involvement overlap, follow the requirements specified in Section 108.01(c).

COUNTING SBE PARTICIPATION

- (a) Recruitment and utilization of certified SBEs is in addition to all other equal opportunity requirements of the contract.
- (b) There is no SBE goal.
- (c) Count SBE participation the same as DBE participation.

IV. ACTIONS REQUIRED BY THE DBE AT THE BIDDING STAGE AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL—

Include the applicable North American Industry Classification System (NAICS) code(s) for each type of work that the DBE firms quotes and intends to perform on the contract.

V. ACTIONS REQUIRED BY BIDDERS AT THE BIDDING STAGE AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL—

- (a) **Submission Preparation.** All bidders are obligated to obtain and to provide all applicable NAICS codes for each proposed DBE and type of work that it will perform on the contract.
- (b) **Submission Requirements.** When the DBE goal established by the Department is met or exceeded, the

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bidders are required to electronically submit evidence of such commitments, by accessing the Department's ECMS website to complete and submit the DBE Minority Participation and Commitment including DBE acknowledgement by 3:00 P.M. prevailing local time within five (5) calendar days after the bid opening. The DBE Minority Participation and Commitment Detail Screen must include the applicable NAICS code(s) for each proposed DBE and type of work that it will perform on the contract. If the DBE Minority Participation and Commitment Detail Screen is not sufficient to provide all DBE NAICS information, email the remaining DBE NAICS information to minorityparticipation@pa.gov or fax the remaining DBE NAICS information to (717) 705-1504 for consideration. DBE Minority Participation and Commitment Screen completed in ECMS regarding commitments to certified DBEs will become part of the contract. When the fifth (5th) calendar day after the bid opening falls on a day that the PennDOT offices are closed, submit the DBE Minority Participation and Commitment by 3:00 P.M. prevailing local time on the next business day. If assistance with the DBE submission is needed, contact the ECMS Help Desk at 855-783-8330 or at 717-783-8330. ECMS Help Desk assistance is available 24 hours a day, 7 days a week.

When the DBE goal established by the Department is not met (the Department will not round up), demonstrate a Good Faith Effort (GFE) to meet the contract DBE goal. Demonstrate that the efforts made were those that a bidder seeking to meet the DBE goal established by the Department would make, given all relevant circumstances. Email the GFE documentation to minorityparticipation@pa.gov or upload or fax to (717) 705-1504 so that it is received by the time specified above for consideration. All submissions must include, as a part of the GFE documentation, copies of each DBE and non-DBE subcontractor quote when a non-DBE subcontractor was selected over a DBE subcontractor for work on the contract due to the apparent low bidders' determination that the DBE's quote was too high or unreasonable. Also, indicate on the DBE Minority Participation and Commitment screen that the Good Faith Effort is being submitted for consideration.

Failure to electronically submit the DBE Minority Participation and Commitment Screen including DBE acknowledgement completed in ECMS or upload or email or fax any applicable GFE documentation for consideration within five (5) calendar days of the bid opening by the 3:00 P.M. deadline will result in the rejection of the bid.

(c) Good Faith Effort Requirements. The demonstration of GFEs is accomplished by seeking out DBE participation in the project given all relevant circumstances. The following illustrate the types of efforts that may be taken, but they are not deemed to be exclusive or exhaustive (for more guidance on GFE requirements, refer to 49 CFR Part 26 Appendix C). The Director and/or Committee will consider other factors and types of efforts that may be relevant:

- Efforts made to conduct market research to identify small business contractors and suppliers and solicit through all reasonable and available means (e.g., use of the DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder should provide written notification, at least 15 calendar days before the bid opening, to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Efforts made to negotiate in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers

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of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract DBE goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder to perform the work of a contract with its own work force does not relieve the bidder of the responsibility to make a GFE. Bidders are not, however, required to accept quotes from DBEs if the price difference is too high or unreasonable.

- Bidder's determination of a DBE as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the contract DBE goal. Another practice considered an inadequate GFE is the rejection of a DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy the contract DBE goal.
- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Efforts to effectively use the services of the Department's DBE Supportive Services Center; services of the Department's SBE Supportive Services Center; services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

VI. ACTIONS TO BE TAKEN BY THE DEPARTMENT BEFORE AWARD—

- (a) **Approval.** If the apparent low bidder submits the DBE Minority Participation and Commitment by the deadline and meets the contract DBE goal and all other contract requirements, the Department will approve the submission.
- (b) **Conditional Approval.** The Department will issue a conditional approval of the DBE Minority Participation and Commitment to the apparent low bidder if (1) any DBE listed on the DBE Minority Participation and Commitment is not prequalified, if required, at the time the Department desires to award the contract or (2) the distinction between regular dealer and transaction expeditor/broker is unclear.
- (c) **Good Faith Effort Review.** If the apparent low bidder submits the DBE submission by the deadline but fails to meet the contract DBE goal and requests a GFE review, the Department will review the GFE documentation. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:
 - 1. IRT reviews and makes a recommendation to the Director.
 - 2. The Director either
 - a. Approves recommendation that the GFE was met and the DBE Minority Participation and Commitment will be approved, or
 - b. Recommends that the Committee make a determination.
 - 3. If forwarded to them, the Committee meets and makes the final determination. If the Committee

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determines that the apparent low bidder met the GFE, the DBE Minority Participation and Commitment will be approved. If the Committee determines that the apparent low bidder has failed to make a GFE, the bid will be rejected and the apparent low bidder will be notified of the rejection.

VII. ACTION TO BE TAKEN BY THE DEPARTMENT DURING CONSTRUCTION—

To ensure that all obligations awarded to DBEs under this contract are met, the Department will review the Contractor's DBE involvement efforts during the performance of the project whether or not the DBE is listed on the approved DBE Minority Participation and Commitment. The review will include a CUF review and analysis.

Sanctions. Upon completion of the work the Department will review the actual DBE participation and make a determination regarding the Contractor's compliance with the applicable requirements. Sanctions may be imposed for noncompliance or unwarranted shortfalls in the approved DBE goal.

VIII. ACTIONS REQUIRED BY THE CONTRACTOR DURING CONSTRUCTION—

- (a) **DBE Participation.** Must continue to make GFEs for the life of the project. When DBE Minority Participation and Commitment is approved with a DBE participation less than the contract DBE goal, continue GFE toward meeting the contract DBE goal. Ensure that the Commitment is attained. Proof of attainment is provided by payments to DBEs and documented in ECMS.
- (b) **DBE Subcontractor Approval.** Firms listed on DBE Minority Participation and Commitment are not to commence work until they are approved.

All firms listed on the approved DBE Minority Participation and Commitment, including those business types other than subcontractor (i.e. dealers, truckers, service providers), must be submitted for subcontractor approval after the contract is executed and approved before DBEs actual performance of work. The subcontractor request must be equal to or greater than the committed amount. Submit for subcontractor approval any other DBE whether or not they are listed on the approved DBE Minority Participation and Commitment. When submitting request for subcontractor approval, attach a copy of the DBE subcontract or agreement or:

- A copy of the executed signature page,
 - A copy of the description of the scope of work, and
 - A copy of the unit prices as they appear in the DBE's subcontract or agreement.
- (c) **Conditional Approval Resolution.** Continually monitor conditional approval of DBE subcontractors. Examples of these conditional approvals may include prequalification requirements and distinction between dealer and broker.
 - (d) **Substitution.** Obtain written approval from the Department before substituting an approved DBE subcontractor or making any change to the DBE participation listed on the approved DBE Minority Participation and Commitment. Immediately request substitution authorization from the District in writing. The request must include documentation supporting the substitution and written agreement from the DBE to the change. Include proof that a certified letter giving the DBE five (5) days to respond with acceptance or to notify the Department of non-acceptance. Demonstrate that every effort has been made to allow the DBE to perform. The District will contact the Bureau of Project Delivery, Contract Awards.

A prime contractor may not self-perform any work committed to a DBE without prior written approval from the Department. Any work committed to a DBE that is instead self-performed by a prime contractor without obtaining prior written approval from the Department will result in non-payment for the specified work. The

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Appendix C – Designated Special Provision 7 (DSP7)

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Department may also seek additional remedies as stated in Part I(c) - Failure to Comply with DBE Requirements.

1. If the DBE agrees to be removed by the Contractor and the Department approves, document the following procedures:
 - Make a GFE in accordance with V.(b) to subcontract the work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall. A prime contractor's inability to find a replacement DBE at the contract price is not, in and of itself, adequate to support a finding that GFEs have been made to replace the original DBE. The fact that the prime contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the prime contractor of the obligation to make GFEs to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
 - When the substitution results in meeting the DBE goal, complete a revised DBE Minority Participation and Commitment with DBE acknowledgement and/or a revised subcontractor approval request within five (5) days of a revision being opened in ECMS. If the DBE performed on the project, the Revised DBE Minority Participation and Commitment and/or subcontractor approval request should include the total amount paid to the DBE before the DBE substitution.
 - When the substitution does not result in meeting the DBE goal, complete a revised DBE Minority Participation and Commitment with DBE acknowledgement and/or a revised subcontractor approval request within five (5) days of a revision being opened in ECMS and provide additional GFE documentation, including (1) a statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, addresses, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and DBE was not reached. If the DBE performed on the project, the Revised DBE Minority Participation and Commitment and/or subcontractor approval request should include the total amount paid to the DBE before the DBE substitution.

Good Faith Effort Review. The Department will review the GFE documentation for substitution. If, during the review of the Contractor's GFE information, the reviewers have questions, the Contractor may be contacted for clarification. The GFE steps are as follows:

- a. Contract Awards reviews and, if acceptable, approves the GFE and DBE revision or recommends that the IRT make the determination.
- b. The IRT either
 - Approves recommendation that the GFE was met and the Minority Participations substitution will be approved, or
 - Disapproves the GFE resulting in a shortfall requiring the contractor to continue GFEs.
- c. If forwarded to them, the IRT makes a final determination.

Do not perform any of the DBE work included in the substitution request without prior approval from the Department.

If the projected DBE participation on an approved DBE Minority Participation and Commitment meets or exceeds the DBE goal amount for the contract without replacing the DBE, then no contract shortfall exists. A Revised DBE Minority Participation and Commitment and/or subcontractor approval request must be submitted to reflect the decreased dollar amount.

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2. If the arrangement to be replaced is not agreeable between the Contractor and the DBE, the following procedures are required:
 - Until a determination is made, do not perform the DBE work without prior approval.
 - The IRT will review and make a determination and the District will notify both the Contractor and the DBE.
 - The Contractor or the DBE may request a meeting with the Department by contacting the District Office.
- (e) **SBE Participation.** SBE Firms are not to commence work until they are approved. The SBE, including those business types other than subcontractor (i.e. supplier, trucking, service provider), must be submitted for subcontractor approval after the contract is executed and approved before the SBEs actual performance of work.
- (f) **Additional Work.** When additional work is required for any classification of work which is identified on the DBE Minority Participation and Commitment to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that it cannot perform the work due to its own limitations.
- (g) **Progress Payments.** Make payments in accordance with Section 110.05. Enter DBE and SBE progress payments into ECMS monthly. Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DBE/SBE subcontractors, suppliers, service provider or consultant.
- (h) **Records and Reports.** Keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. Design these records to indicate:
 - The number of disadvantaged and non-disadvantaged subcontractors, small businesses, regular dealers, manufacturers, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project.
 - The progress and efforts made in seeking out DBE and SBE contractor organizations and individual DBEs and SBEs for work on this project.
 - Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs and SBEs for this project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DBE and SBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by the Department. Enter the payment information in ECMS "DBE Payments" within 5 business days after the end of the month and include the following:
 - The number of contracts awarded to DBEs and SBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.
 - The amount paid to each DBE and SBE during the month and the amount paid to date. If no payments are made to a DBE/SBE during the month, enter a zero (\$0.00) payment.
 - Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's and SBEs work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of three (3) years following acceptance of final payment. Make these records available for inspection by the Department and FHWA.

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2. If the arrangement to be replaced is not agreeable between the Contractor and the DBE, the following procedures are required:
 - Until a determination is made, do not perform the DBE work without prior approval.
 - The IRT will review and make a determination and the District will notify both the Contractor and the DBE.
 - The Contractor or the DBE may request a meeting with the Department by contacting the District Office.
- (e) **SBE Participation.** SBE Firms are not to commence work until they are approved. The SBE, including those business types other than subcontractor (i.e. supplier, trucking, service provider), must be submitted for subcontractor approval after the contract is executed and approved before the SBEs actual performance of work.
- (f) **Additional Work.** When additional work is required for any classification of work which is identified on the DBE Minority Participation and Commitment to be performed by the DBE, at least 50% of this additional work will be performed by the same DBE unless the DBE submits, in writing, that it cannot perform the work due to its own limitations.
- (g) **Progress Payments.** Make payments in accordance with Section 110.05. Enter DBE and SBE progress payments into ECMS monthly. Bring to the attention of the Department, in writing, any situation in which regularly scheduled progress payments are not made to DBE/SBE subcontractors, suppliers, service provider or consultant.
- (h) **Records and Reports.** Keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. Design these records to indicate:
 - The number of disadvantaged and non-disadvantaged subcontractors, small businesses, regular dealers, manufacturers, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project.
 - The progress and efforts made in seeking out DBE and SBE contractor organizations and individual DBEs and SBEs for work on this project.
 - Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs and SBEs for this project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DBE and SBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by the Department. Enter the payment information in ECMS “DBE Payments” within 5 business days after the end of the month and include the following:
 - The number of contracts awarded to DBEs and SBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.
 - The amount paid to each DBE and SBE during the month and the amount paid to date. If no payments are made to a DBE/SBE during the month, enter a zero (\$0.00) payment.
 - Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's and SBEs work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of three (3) years following acceptance of final payment. Make these records available for inspection by the Department and FHWA.

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If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material to the Inspector-in-Charge on a monthly basis.

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**Attachment C
Provisional Prequalification Guidance**

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 pennsylvania DEPARTMENT OF TRANSPORTATION	BUREAU OF PROJECT DELIVERY HIGHWAY DELIVERY DIVISION CONTRACT MANAGEMENT SECTION
VERSION: 1.0.1	VERSION REPLACED: 1.0.0
LAST REVISED: 4.19.2013	ISSUED: 3.10.2006
SUBJECT: PROVISIONAL PREQUALIFICATION	

PROVISIONAL PREQUALIFICATION DESCRIPTION

Provisional prequalification is the provisional assignment of a work classification code by PennDOT to a prequalified contractor, working as a subcontractor, if a Prime Contractor is willing to train and directly supervise this work as it is self-performed by the subcontractor. This work classification code must be assigned to the Prime Contractor to be considered for provisional prequalification for the subcontractor. Provisional prequalification approval is project-specific. Successful completion of provisional prequalification may be applied towards the regular assignment of the work classification code.

PROVISIONAL PREQUALIFICATION REQUESTING AUTHORITY

The Prime Contractor of a PennDOT project is the sole requesting authority.

PROVISIONAL PREQUALIFICATION APPROVING AUTHORITY

Provisional prequalification requests are only evaluated by the Prequalification Office in PennDOT's Contract Management Section. Approval is granted in writing by the Chief, Contract Management Section. Verbal or written direction by any other individual is invalid.


PROVISIONAL PREQUALIFICATION REQUEST REQUIREMENTS

1. Written request on the Prime Contractor's letterhead.
2. Name of proposed, prequalified subcontractor.
3. ECMS project number and construction item number(s) to be completed by the proposed, prequalified subcontractor.
4. Name of the Prime Contractor's superintendent that will provide the training to the proposed, prequalified subcontractor.
5. The Prime Contractor's detailed training plan for the proposed, prequalified subcontractor, outlining the steps to be followed.
6. Written request on the proposed, prequalified subcontractor's letterhead to the Prime Contractor that meets the following requirements:
 - a. Name of the subcontractor's superintendent that will receive the training from the Prime Contractor.

FILENAME AND PATH:

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 pennsylvania DEPARTMENT OF TRANSPORTATION	BUREAU OF PROJECT DELIVERY HIGHWAY DELIVERY DIVISION CONTRACT MANAGEMENT SECTION
VERSION: 1.0.1	VERSION REPLACED: 1.0.0
LAST REVISED: 4.19.2013	ISSUED: 3.10.2006
SUBJECT: PROVISIONAL PREQUALIFICATION	

- b. Declaration of interest in expanding its scope of operations into the specified classification of work.
 - c. Signed by an individual that is authorized to enter into commitments on behalf of the subcontractor.
7. Signed by an individual that is authorized to enter into commitments on behalf of the Prime Contractor.
8. Send to the Prequalification Office by any of the following methods:
 - a. By mail to the Bureau of Project Delivery; 400 North Street-7th Floor; Harrisburg, PA 17120
 - b. By fax to (717) 783-7969
 - c. By email to RA-pdPrequalBOCM@pa.gov

ECMS PROVISIONAL PREQUALIFICATION SUBCONTRACTOR REQUEST REQUIREMENTS

1. Written approval by the Chief, Contract Management Section prior to ECMS subcontractor request approval.
2. If the proposed, prequalified subcontractor will be self-performing item(s) of work on the project in addition to the provisional prequalification item(s) of work, submit one subcontractor request for only the provisional prequalification item(s) and a separate subcontractor request for the additional items(s) of work.
3. For the provisional prequalification subcontractor request, include "Provisional Prequalification approval on MM/DD/YYYY" as the partial/incidental description of the item(s).


PROVISIONAL PREQUALIFICATION GUIDELINES

1. Applies to first-tier subcontract work only (i.e., does not apply to sub-subcontract work).
2. Only **one** provisional prequalification work classification will be granted per subcontractor at one time. Once a provisional work classification has been made permanent, the subcontractor may initiate another provisional request.
3. The subcontractor may apply the provisional work classification to **no more** than three projects at one time provided that they have adequate staff and resources.
4. The Prime Contractor will be limited to training two provisional subcontractors per project at one time.

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**PennDOT Mentor Protégé Program
Program Guide
Updated January 27, 2023**

 pennsylvania DEPARTMENT OF TRANSPORTATION	BUREAU OF PROJECT DELIVERY HIGHWAY DELIVERY DIVISION CONTRACT MANAGEMENT SECTION
VERSION: 1.0.1	VERSION REPLACED: 1.0.0
LAST REVISED: 4.19.2013	ISSUED: 3.10.2006
SUBJECT: PROVISIONAL PREQUALIFICATION	

5. The items of proposed subcontract work must be related and assignable to a single work classification.
6. The items of proposed subcontract work should be of sufficient quantity to provide at least twenty working days of meaningful training on that project.
7. The Prime Contractor must be prequalified for the work classification applicable to the proposed subcontracted work.
8. A Prime Contractor with a GHC (general highway contractor) designation and not possessing the applicable work classification may submit verifiable experience of their superintendent to provide training and oversight to the subcontractor.
9. The proposed subcontractor must be currently prequalified in at least one work classification.
10. The Prime Contractor must be willing to provide training to the superintendent of the proposed subcontractor.
11. The proposed subcontractor must be willing to be trained by a qualified superintendent of the Prime Contractor (not a third party).
12. The proposed subcontractor must use their own employees (not the employees of the Prime Contractor).
13. The proposed subcontractor must use their own equipment (not the equipment of the Prime Contractor) or lease equipment from an independent rental company.
14. The proposed subcontractor must purchase all materials used in performance of the subcontract work.
15. The Prime Contractor and the proposed subcontractor must notify the Prequalification Office at least one week prior to starting work on the project.
16. Any changes to the approved provisional prequalification request must be submitted to the Prequalification Office for approval.


PROVISIONAL PREQUALIFICATION PAST PERFORMANCE REPORT

Upon completion of the provisional prequalification subcontract work, the District will file a Past Performance Report with the Prequalification Officer together with a recommendation to either 1) revoke provisional approval, unattainable; 2) continue provisional approval, needs further training; or 3) make permanent, can perform without further training.

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PROVISIONAL PREQUALIFICATION TO REGULAR PREQUALIFICATION

Complete an Additional Codes Request application, available for download from ECMS, that includes all completed work within the last five years that is associated with the provisionally assigned work classification code, and submit to the Prequalification Office.

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**Attachment D
ECMS Construction Contract Special Provision**

**Updated June 24, 2022
Disadvantage Business Enterprise (DBE)
Mentor Protégé Program**

I. DESCRIPTION—This program is intended to enhance the construction capabilities of existing Pennsylvania Unified Certification Program (PAUCP) DBE prequalified subcontractor in additional prequalification work classifications.

Prime Contractor to mentor and coach the PAUCP DBE prequalified subcontractor on this project to successfully obtain new prequalification work classification(s) in an area of construction that the subcontractor is not currently prequalified in.

Participation in this program is optional at the contractor’s discretion.

(a) **General Requirements.** The requirements set forth herein constitute the specific affirmative action requirements for project activities under this contract and supplement the equal employment opportunity requirements set forth in the Required Contract Provisions.

(b) In conjunction with the PAUCP DBE prequalified subcontractor, complete and submit a “Provisional Prequalification Request” according to Provisional Prequalification guidance in PennDOT’s Engineering and Construction Management System (ECMS) located at ECMS/Business Partner/Contractors Portal/Provisional Prequalification Guidelines.

(c) The items of proposed provisional subcontract work should be of sufficient quantity to provide meaningful training on the project.

(d) Provide qualified supervision in the form of coaching and mentoring to the PAUCP DBE subcontractor’s on-site supervisor to make the provisional operation activities successful.

(e) The PAUCP DBE subcontractor is to provide the labor force, supervision, and equipment to perform the activities that are provisionally approved for this project.

(f) The PAUCP DBE prequalified subcontractor cannot utilize labor force from the contractor or any other subcontractor on the project. The PAUCP DBE prequalified subcontractor cannot rent equipment from the contractor or any other subcontractor on the project.

(g) Comply with all the Provisional Prequalification Guidelines.

(h) Only proceed after approval of the “Provisional, Project Specific Code Request” from the Prequalification Office.

All Commercially Useful Function (CUF) will be enforced. Flexibility will be considered on an individual basis. Department approved CUF modifications must be followed.

II. CONSTRUCTION—

(a) **Preparation Activities.** Provide the PAUCP DBE prequalified subcontractor with coaching and mentoring on the materials, equipment, and labor necessary to perform the provisionally approved activity. Identify the submission and approvals required for the provisionally approved activity prior to commencing the work.

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- (b) Verify Preparation.** Verify that the items identified in (a) above are completed and available for the work activities. Notify the Prequalification Office one week before the work is to be performed.
- (c) Work Performance.** Provide full time qualified supervision to coaching and mentoring to the PAUCP DBE subcontractor's on-site supervisor to make the provisional code operation activities successful.
- (d) Acceptance.** At the conclusion of the DBE's daily activities for the provisional code, have a discussion with the DBE's supervisor and the Department Representative to verify that the activities met the Department's requirements and expectations.
- (e) Defective Work.** Section 105.12

Prime Contractor solely responsible for the quality of provisional code work performed by the DBE subconsultant and delays caused by the defective work.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) MENTOR PROTÉGÉ PROGRAM is defective if:

- Work performed by the DBE subcontractor failed to meet specifications and quality of workmanship expected of work performed for the provisional classification code
- Work required to be redone

Defective work redone, repaired, or replaced at no additional cost to the Department.

III. MEASUREMENT AND PAYMENT—Dollar

The proposal will include an item and a predetermined amount of money for DISADVANTAGED BUSINESS ENTERPRISE (DBE) MENTOR PROTÉGÉ PROGRAM. The contract item will have a unit of measure of DOLLAR, a unit price of \$1.00, and a quantity equal to the predetermined amount.

Prime Contractor only is eligible for the payment under the DISADVANTAGED BUSINESS ENTERPRISE (DBE) MENTOR PROTÉGÉ PROGRAM item as follows:

- Prime Contractor paid for the documented cost of actual expenses reasonably incurred, directly attributable to, and allowable under the contract for mentoring one DBE Subcontractor up to a maximum \$25,000
- Not mentoring a DBE Subcontractor - \$0

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**Attachment E
Frequently Asked Questions regarding the \$25,000 DBE Mentor Protege Special Provision**

1. Was prior guidance or policy issued regarding prequalification. Please see Attachment C
2. Is the \$25,000 Pay Line Item per Project or per Code? The provisional prequalification code is set up per project, as, though while encouraged, there is no guarantee the Prime Contractor and DBE sub will pair up and be awarded two additional projects.
3. Does the \$25,000 Pay Line-item count toward the DBE % in the project? The \$25,000 is only for the Prime Contractor
4. Does the Proteges work count toward the DBE % in the project? Approved Provisional Work completed counts toward the DBE goal.
5. What is the risk for the Prime Contractor at time of bid using a DBE sub that the Prime Contractor intends to mentor in obtaining the additional Prequalification code? PennDOT will follow its normal procedures for awarding projects. Note the Pay Line item free to the contractor and optional to pursue. A prime contractor is not required to submit a DBE Protégé as part of its DBE commitment. To clarify for the purposes of awarding a contract, PennDOT conditionally approves the DBE commitments when a DBE has not been assigned the prequalification code that is associated with the proposed item(s) of work. A prime contractor is still responsible for monitoring and ensuring that a DBE is sufficiently prequalified prior to the start of its work. A Provisional Prequalification Request under the Mentor Protégé Program that has been approved by the Prequalification Office prior to the submission of an ECMS subcontractor request satisfies this requirement. In general, PennDOT rejects bids if the Prime didn't meet the DBE goal and does not demonstrate a Good Faith Effort.
6. Is this Special Provision for all projects or a pilot? It is not a pilot, but it will start with 1-2 projects per district for the first year. It will evolve into a special provision eligible for all projects.
7. What is Commercial Use Function? The Program Guide has made available Publication 93 and Attachment B Form DSP7. Attachment B defines CUF in detail.

The DBE must employ a work force separate from that employed by the Prime Contractor. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the Contract, provided that the individual was independently recruited by the DBE in accordance with standard industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed. All work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Prime Contractor. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the work.

Virtual Training modules will be added to ProRank Academy.

8. Should we use the term DB/ DBE or just DBE? Depends how is the project funded. DBE is the federal program in which the Mentor protégé Program is operating under. Provisional prequalification is for everyone not just DBEs, but if a Prime Contractor uses a non DBE, they will not be eligible for the pay item.

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9. Is there a minimum or maximum number of days the mentoring needs to occur? No, as long as it's done within the contract period.

10. What field documentation is needed to get the \$25,000? The same documentation as is required outside of the Mentor protégé Program and provisional prequalification requirements. CUF applies. If the work gets done and there was a CUF, the Prime gets paid. The successful completion of a provisional work class code on one project will not provide for the assignment of the code to the protégé on a permanent basis.

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**Attachment F
Mentor Protégé Program Activity Invoicing Log**

