



OFFICE OF THE AUDITOR GENERAL

April 10, 2024
Performance Audit

Report Highlights

Frank J. Mautino Auditor General

www.auditor.illinois.gov

Performance Audit of IDOT's Certification of DBE Businesses

Background:

On September 1, 2021, the Legislative Audit Commission adopted Resolution Number 160, which directed the Office of the Auditor General to conduct a performance audit of the Illinois Department of Transportation's (IDOT) certification of businesses as Disadvantaged Business Enterprises (DBEs) through the Illinois Unified Certification Program (IL UCP) (see Appendix A). The Disadvantaged Business Enterprise (DBE) program is a federally mandated program intended to provide nondiscriminatory contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals.

Key Findings:

- For federal fiscal years 2019 through 2023 (contract awards for 2023 are to March 31, 2023), nearly \$5.7 billion was awarded to all contractors for Federal Highway Administration (FHWA) projects. During that period, nearly \$846 million, or 14.9 percent was awarded to DBE contractors.
- Auditors found certification files maintained by IDOT to be well organized and to contain a large amount of documentation. Auditors reviewed 25 randomly selected files from firms certified between January 1, 2023, and June 30, 2023. These files were requested for review to ensure verification procedures regarding socially and economically disadvantaged status, business size, ownership, and control were adequate. Initial certification applications for all approved DBE certified firms were kept on file, and auditors found all required documentation in each of the files reviewed.
- Auditors also reviewed 25 randomly selected files from firms certified between July 1, 2020, and June 30, 2023, in order to identify those with No Change Affidavits. These files were requested annually to determine whether the firms continued to be qualified for participation. All No Change Affidavits requested by auditors were made available for testing through IDOT, and all files were properly organized and labeled. Auditors found all files selected for review contained the required documentation.
- The United States Department of Transportation (USDOT) noted that other than for some timeliness issues due to a lack of staffing, IDOT was in compliance with all aspects of the DBE certification process. It was also noted that there have been no issues identified during site visits at IDOT or with the No Change Affidavit process.
- According to documentation provided by IDOT, it has not met its aspirational DBE goals. According to the FHWA, IDOT has never met its DBE goals. Per 49 CFR Part 26.47, IDOT cannot be penalized or treated as being in noncompliance because its DBE participation falls short of its overall goal, unless it has failed to administer its program in good faith. For Federal Fiscal Year 2022, IDOT's DBE goal was 20.27 percent, and IDOT reported 15.83 percent, which was 4.44 percent below the goal. Although IDOT has not met its goal, there have been no penalties according to an FHWA official.
- New certification employees are required to complete USDOT mandated training within 30 days of being hired and biennially (once every two years) thereafter. Auditors found that all certification employees had the required training. Additionally, the FHWA noted that IDOT was in compliance with all training requirements.

Key Recommendation:

The audit report contains one recommendation:

- The Illinois Department of Transportation should continue working to meet its aspirational DBE goals in accordance with 49 CFR Part 26.45.

This performance audit was conducted by the staff of the Office of the Auditor General.

Report Digest

On September 1, 2021, the Legislative Audit Commission adopted Resolution Number 160, which directed the Office of the Auditor General to conduct a performance audit of the Illinois Department of Transportation’s (IDOT) certification of businesses as Disadvantaged Business Enterprises (DBEs) through the Illinois Unified Certification Program (IL UCP) (see Appendix A). Our assessment of the audit determinations is shown in **Digest Exhibit 1**. (pages 1-2)

Digest Exhibit 1

ASSESSMENT OF AUDIT DETERMINATIONS

Determination from Audit Resolution	Auditor Assessment
<p><i>Whether certification and recertification procedures are adequate to assure that businesses certified by IDOT in the IL UCP are legitimately classified as businesses owned and controlled by minorities, females, or persons with disabilities.</i></p>	<ul style="list-style-type: none"> Legislative Audit Commission Resolution Number 160 included several determinations that required a similar review by auditors. Therefore, auditors conducted testing of IDOT files to answer all of these determinations. It should be noted that the authorizing federal law, 49 CFR Part 26, does not include persons with disabilities as persons who are protected from discrimination. Also, recertifications are not allowed by 49 CFR Part 26. No Change Affidavits, not recertifications, are annually completed by participating firms.
<p><i>Whether the established procedures and processes that govern certification of businesses owned and controlled by minorities, females, or persons with disabilities are being followed.</i></p>	<ul style="list-style-type: none"> Auditors found certification files maintained by IDOT to be well organized and to contain a large amount of documentation. These files were requested for review to ensure verification procedures regarding socially and economically disadvantaged status, business size, ownership, and control were adequate. Initial certification applications for all approved DBE certified firms were kept on file, and auditors found all required documentation in each of the files reviewed. Auditors also reviewed files from firms certified between July 1, 2020, and June 30, 2023, in order to identify those with No Change Affidavits. These files were requested annually to determine whether the firms continued to be qualified for participation. All No Change Affidavits requested by auditors were made available for testing through IDOT, and all files were properly organized and labeled. Auditors found all files selected for review contained the required documentation. (pages 12-15)
<p><i>What steps are followed to verify information provided by businesses certified by IDOT in the IL UCP, such as review of pertinent documentation, interviews, and on-site visits.</i></p>	<ul style="list-style-type: none"> New certification employees are required to complete United States Department of Transportation (USDOT) mandated training within 30 days of being hired and biennially (once every two years) thereafter. Auditors found that all certification employees had the required training. Additionally, the Federal Highway Administration noted that IDOT was in compliance with all training requirements. (pages 22-23)
<p><i>Whether the certifications are periodically reviewed to ensure that businesses in the program continue to be qualified for participation.</i></p>	
<p><i>Whether staff responsible for certification of these businesses have received adequate training.</i></p>	

Digest Exhibit 1

ASSESSMENT OF AUDIT DETERMINATIONS

Determination from Audit Resolution	Auditor Assessment
<p><i>Whether procedures for enforcing compliance with federal regulations, including contract termination and contractor suspension, are adequate and uniformly enforced.</i></p>	<ul style="list-style-type: none"> • According to IDOT officials, there have been no contract terminations or suspensions recently. The independent Chief Procurement Officer (CPO) for IDOT can suspend a firm for up to ten years. However, according to the CPO, suspension is reserved for the most egregious circumstances. Suspension often results in a firm or company going out of business, which in some cases, may be a justified result. Other times, non-compliance may be less serious, and a settlement agreement is initiated. There are currently only two firms, one Disadvantaged Business Enterprise (DBE) and one non-DBE that were recently investigated on grounds for suspension, which were referred to the CPO from the Federal Highway Administration (FHWA). In lieu of a suspension, they entered into settlement agreements. Settlement agreements are preferred in order to avoid suspending a firm and potentially taking work from a disadvantaged business. (pages 16-18)
<p><i>Whether recent DBE goals established by IDOT have been met.</i></p>	<ul style="list-style-type: none"> • According to documentation provided by IDOT, it has not met its aspirational DBE goals. According to the Federal Highway Administration, IDOT has never met its DBE goals. Per 49 CFR Part 26.47, IDOT cannot be penalized or treated as being in noncompliance because its DBE participation falls short of its overall goal, unless it has failed to administer its program in good faith. For Federal Fiscal Year 2022, IDOT's DBE goal was 20.27 percent and IDOT reported 15.83 percent, which was 4.44 percent below the goal. Although IDOT has not met its goal, there have been no penalties according to an FHWA official. • The audit recommended that the Illinois Department of Transportation should continue working to meet its aspirational DBE goals in accordance with 49 CFR Part 26.45. (pages 19-21)

Source: OAG assessment of the audit determinations contained in LAC Resolution Number 160.

Background

The Disadvantaged Business Enterprise (DBE) program is a federally mandated program intended to provide nondiscriminatory contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals. The DBE program is for the United States Department of Transportation's highway, mass transit, and airport financial assistance programs.

The statutory provision governing the DBE program in the highway and mass transit financial assistance programs is 1101(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, August 10, 2005. The regulation governing the DBE program as it relates to the highway assistance programs is 49 CFR Part 26.

The DBE program is administered by the Illinois Department of Transportation (IDOT) and provides minorities, women, and other eligible small businesses an opportunity to participate in highway, mass transit, and airport contracts that are federal and state funded. The presumptive groups that are eligible for the DBE program are:

- Black Americans;
- Hispanic Americans;
- Native Americans;
- Asian-Pacific Americans;
- Subcontinent Asian Americans;
- Women; and
- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration.

Individuals who are not part of a presumptive group can be considered for DBE certification on a case by case basis. However, those individuals have the burden of proving that they are socially and economically disadvantaged per the guidance found in Appendix E of 49 CFR Part 26.

The size of business eligible for the program is outlined by 13 CFR Part 121. The Small Business Size Regulations govern the criteria for determining whether a business is considered "small" for federal government programs and contracts. The regulations set size standards by industry, allowing businesses that meet these criteria to be eligible for certain advantages related to government contracting and access to small business loans and programs. (pages 3-7)

DBE Program Size

IDOT officials provided auditors with amounts of contracts awarded for all Federal Highway Administration (FHWA), Federal Aviation Administration

Digest Exhibit 2
**FEDERAL HIGHWAY ADMINISTRATION
 CONTRACT AWARDS BY FFY**

FFY	Total All Dollars Awarded (DBE and Non-DBE)	Total DBE Dollars Awarded (DBE Only)
2019	\$1,114,556,867	\$160,871,643
2020	\$1,411,331,484	\$182,847,262
2021	\$987,623,915	\$152,750,283
2022	\$1,539,766,514	\$238,730,310
2023 ¹	\$612,049,498	\$110,792,987
Totals	\$5,665,328,278	\$845,992,485

¹ For awards between 10/1/22 and 3/31/23.

Source: Illinois Department of Transportation.

(FAA), and Federal Transit Administration (FTA) projects for federal fiscal years 2019, 2020, 2021, 2022, and 2023 (contract awards for 2023 are to March 31, 2023). IDOT also provided the amount of these contracts that was awarded to DBE contractors. **Digest Exhibit 2** shows that for federal fiscal years 2019 through 2023, nearly \$5.7 billion was awarded to all contractors for FHWA projects. During that period, nearly \$846 million, or 14.9 percent was awarded to DBE contractors. One contract to a prime contractor turns into numerous contracts with subcontractors. For example, in FFY22, there were 833 prime contracts awarded resulting in 2,136 DBE subcontracts. Additionally, as of December

21, 2022, there were 2,899 certified DBE firms in the IL UCP.

IDOT also had awards for FAA projects. For federal fiscal years 2019, 2020, 2021, and 2022, \$112.8 million was awarded to all contractors. DBE contractors received \$15.1 million or 13.4 percent.

FTA project awards for federal fiscal years 2019, 2020, 2021, and 2022 totaled \$41.5 million. There were no DBE contracts awarded for these projects. (pages 8-11)

Review of IDOT’s DBE Certification and Recertification Procedures

Auditors found certification files maintained by IDOT to be well organized and to contain a large amount of documentation. Auditors reviewed 25 randomly selected files from firms certified between January 1, 2023, and June 30, 2023. These files were requested for review to ensure verification procedures regarding socially and economically disadvantaged status, business size, ownership, and control were adequate. Initial certification applications for all approved DBE certified firms were kept on file, and auditors found all required documentation in each of the files reviewed.

Auditors also reviewed 25 randomly selected files from firms certified between July 1, 2020, and June 30, 2023, in order to identify those with No Change Affidavits. These files were requested annually to determine whether the firms continued to be qualified for participation. All No Change Affidavits requested by auditors were made available for testing through IDOT, and all files were properly organized and labeled. Auditors found all files selected for review contained the required documentation. (pages 12-15)

Contract Termination and Contractor Suspension

According to IDOT officials, there have been no contract terminations or suspensions recently. The independent Chief Procurement Officer (CPO) for IDOT can suspend a firm for up to ten years. However, according to the CPO, suspension is reserved for the most egregious circumstances. Suspension often results in a firm or company going out of business, which in some cases, may be a justified result. Other times, non-compliance may be less serious, and a settlement agreement is initiated. There are currently only two firms, one DBE and one non-DBE that were recently investigated on grounds for suspension which were referred to the CPO from the Federal Highway Administration. In lieu of a suspension, they entered into settlement agreements. Settlement agreements are preferred in order to avoid suspending a firm and potentially taking work from a disadvantaged business. (pages 16-18)

IDOT DBE Goals

According to documentation provided by IDOT, it has not met its aspirational DBE goals (See Digest Exhibit 3). According to the Federal Highway Administration (FHWA), IDOT has never met its DBE goals. Per 49 CFR Part 26.47, IDOT cannot be penalized or treated as being in noncompliance because its DBE participation falls short of its overall goal, unless it has failed to administer its program in good faith. For Federal Fiscal Year 2022, IDOT’s DBE goal was 20.27 percent and IDOT reported 15.83 percent, which was 4.44 percent below the goal. Although IDOT has not met its goal, there have been no penalties according to an FHWA official. (pages 19-21)

Digest Exhibit 3						
SHORTFALL ANALYSIS PERCENTAGES						
FFY	2018	2019	2020	2021	2022	
Goal (%)	18.70	18.70	18.70	18.70	20.27	
DBE (%)	13.49	15.05	13.06	15.92	15.83	
Shortfall (%)	-5.21	-3.65	-5.64	-2.78	-4.44	

Note: City of Chicago Uniform Report Information and IL UCP records are included in this table.
Source: Illinois Department of Transportation.

Staff Training

New certification employees are required to complete USDOT mandated training within 30 days of being hired and biennially (once every two years) thereafter. Auditors found that all certification employees had the required training. Additionally, the FHWA noted that IDOT was in compliance with all training requirements. (pages 22-23)

Audit Recommendations

The audit report contains one recommendation directed to the Illinois Department of Transportation. The Department agreed with the recommendation. The complete response from the Department is included in this report as Appendix C.

This performance audit was conducted by staff of the Office of the Auditor General.

SIGNED ORIGINAL ON FILE

JOE BUTCHER
Division Director

This report is transmitted in accordance with Sections 3-14 and 3-15 of the Illinois State Auditing Act.

SIGNED ORIGINAL ON FILE

FRANK J. MAUTINO
Auditor General

FJM:SAW