
State of Illinois
Office of the Auditor General



Performance Audit of the

**Illinois Department of
Transportation's
Certification of Businesses
as Disadvantaged
Business Enterprises**

April 10, 2024

Frank J. Mautino
Auditor General

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OFFICE OF THE AUDITOR GENERAL
FRANK J. MAUTINO

*To the Legislative Audit Commission, the Speaker
and Minority Leader of the House of Representatives,
the President and Minority Leader of the Senate, the
members of the General Assembly, and the
Governor:*

This is our report of the performance audit of the Illinois Department of Transportation's certification of businesses as Disadvantaged Business Enterprises through the Illinois Unified Certification Program.

The audit was conducted pursuant to Legislative Audit Commission Resolution Number 160. This audit was conducted in accordance with generally accepted government auditing standards and the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

The audit report is transmitted in conformance with Sections 3-14 and 3-15 of the Illinois State Auditing Act.

SIGNED ORIGINAL ON FILE

FRANK J. MAUTINO
Auditor General

Springfield, Illinois
April 2024



OFFICE OF THE AUDITOR GENERAL

April 10, 2024
Performance Audit

Report Highlights

Frank J. Mautino Auditor General

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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

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Introduction

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 audit was to specifically include, but not be limited to, the following determinations:

1. 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; *(Note: 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 DBEs.)*
2. Whether the established procedures and processes that govern certification of businesses owned and controlled by minorities, females, or persons with disabilities are being followed; *(Note: the authorizing federal law, 49 CFR Part 26, does not include persons with disabilities as persons who are protected from discrimination.)*
3. Whether staff responsible for certification of these businesses have received adequate training;

4. 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;
5. Whether the certifications are periodically reviewed to ensure that businesses in the program continue to be qualified for participation;
6. Whether procedures for enforcing compliance with federal regulations, including contract termination and contractor suspension, are adequate and uniformly enforced; and
7. Whether recent DBE goals established by IDOT have been met.

Legislative Audit Commission Resolution Number 160 does not dictate a time frame for the audit period. As a result, auditors chose to review the most recent documentation available. Therefore, auditors reviewed certifications and the procedures for these reviews from January 1, 2023, through June 30, 2023. The recertification (No Change Affidavit) process and its procedures were reviewed from certifications between July 1, 2020, and June 30, 2023. (Note: the most recent recertification was reviewed)

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 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.

Laws Governing IDOT's DBE Program

There are two federal regulations that authorize and provide guidance over IDOT's DBE program. No specific State statute or administrative rule was identified by IDOT officials. Auditors did review the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (30 ILCS 575) (Act). The Act does not specifically exclude IDOT. The Act also includes a Business Enterprise Council of which the Secretary of Transportation is a member. According to IDOT officials, 30 ILCS 575 governs a separate program that is not related to construction and construction related programs.

The two federal regulations authorize and provide guidance over the DBE program as discussed below.

49 CFR Part 26

According to the Illinois Department of Transportation, its Unified Certification Program (IL UCP) is required by federal regulation 49 CFR Part 26. It is a regulation implemented by the United States Department of Transportation (USDOT) that focuses on ensuring a level playing field in transportation contracting. Below is a summary of the key points covered in this regulation:

- **Purpose:** The purpose of 49 CFR Part 26 is to promote fair participation of disadvantaged business enterprises in USDOT-assisted contracts.
- **DBE Program:** 49 CFR Part 26 establishes the DBE program, which aims to create a level playing field for socially and economically disadvantaged individuals to participate in transportation-related contracts. It requires state and local transportation agencies that receive USDOT funding to implement DBE programs and set goals for DBE participation.
- **Certification:** The regulation outlines the certification process for DBEs, including the eligibility criteria and procedures to become certified. It also establishes the UCP to streamline the certification process across different agencies. DBE program applicants only need to apply once for DBE certification, which will be honored by all participating entities in the IL UCP.
- **Contract Goals:** 49 CFR Part 26 requires recipients of USDOT funding to establish contract goals for DBE participation on federally-assisted projects. These goals represent the percentage of contract dollars that must be awarded to DBEs through prime contractors.
- **Good Faith Efforts:** Prime contractors are required to make good faith efforts to meet the DBE goals by attempting to involve certified DBEs in their contracts. These efforts involve outreach, advertising, and negotiation with DBEs.
- **Counting DBE Participation:** The regulation provides guidelines on how DBE participation should be counted towards contract goals. It covers areas such as subcontractor participation, trucking, and other methods of DBE involvement.

- **Prompt Payment and Retainage:** 49 CFR Part 26 mandates prompt payment to subcontractors, including DBEs, and restricts the withholding of retainage unless certain conditions are met.
- **Reporting and Monitoring:** Recipients of USDOT funds are required to submit periodic reports on DBE participation and provide supporting documentation. The regulation also establishes monitoring and enforcement mechanisms to ensure compliance.
- **Compliance and Penalties:** Non-compliance with the provisions of 49 CFR Part 26 may lead to penalties, including the suspension or termination of funding, administrative proceedings, and other appropriate actions.

13 CFR Part 121

Title 13 of the Code of Federal Regulations is dedicated to Business Credit and Assistance. Specifically, 13 CFR Part 121 outlines the Small Business Size Regulations, which govern the criteria for determining whether a business is considered "small" for federal government programs and contracts.

As of March 1, 2022, a firm is not an eligible DBE if it had average annual gross receipts over the previous three fiscal years in excess of \$28.48 million.

The size standards vary depending on the North American Industry Classification System (NAICS) codes assigned to different industries. Within each industry type, the two primary criteria for determining a small business size are average annual receipts and the number of employees.

Examples of the types of construction and architectural and engineering contractors who are contracted by IDOT in the DBE program are shown in **Exhibit 1**.

Exhibit 1
SIZE STANDARDS FOR CONSTRUCTION, ARCHITECTURE, AND ENGINEERING CONTRACTORS
 By Contractor Type

Contractor Type	Size in Millions¹
General Construction (Highway, Street, and Bridge Construction)	\$28.48
Electrical, Plumbing, and Site Preparation	\$16.5
Engineering Services	\$16.5
Environmental Consulting Services	\$16.5
Geophysical Surveying and Mapping Services	\$16.5
Surveying and Mapping Services	\$16.5
Landscaping Services	\$8
Drafting Services	\$8

¹ Small business size standard is from 13 CFR Part 121.201 as of March 1, 2022.

Source: Illinois Department of Transportation.

The DBE Certification Process

The certification process outlined in 49 CFR Part 26 pertains to the Disadvantaged Business Enterprise program, which aims to create a level playing field for federally funded transportation projects. The following are the key steps involved in the certification process:

The certification process outlined in 49 CFR Part 26 pertains to the Disadvantaged Business Enterprise program, which aims to create a level playing field for federally funded transportation projects.

1. **Eligibility:** To be eligible for DBE certification, a firm must be a small business that is at least 51 percent owned and controlled by socially and economically disadvantaged individuals. The individual claiming disadvantaged status must provide evidence of personal net worth below a certain threshold.
2. **Application:** The firm seeking DBE certification must submit a complete application providing detailed information about the ownership, control, and management of the business, as well as its financial records.
3. **Review:** The certifying agency reviews the application to determine if it meets the eligibility requirements. This involves verifying the ownership and control of the firm and assessing the personal net worth of the disadvantaged individuals involved.
4. **On-site Visit:** In some cases, the certifying agency may conduct an on-site visit to the applicant's business location to further evaluate the firm's operations, management, and equipment.
5. **Determination:** Based on the information provided in the application and any additional verification steps, the certifying agency makes a determination regarding the firm's eligibility for DBE certification. This decision is communicated to the applicant in writing.
6. **Certification or Denial:** If the firm meets the eligibility criteria, it is awarded DBE certification and added to the appropriate directory or database of certified DBEs. If the agency determines that the firm does not meet the requirements, it will issue a denial with a clear explanation of the reasons.
7. **Appeals:** In case of a denial, the applicant has the right to appeal the decision within 90 days. The appeals process allows the applicant to present additional evidence or address any deficiencies identified in the initial determination.

Monitoring Requirements

The monitoring requirements are designed to ensure the integrity and effectiveness of the DBE program. Here are the key monitoring requirements specified in 49 CFR Part 26:

- **On-Site Visits:** Recipients of federal funding, such as IDOT, are required to conduct on-site visits to the offices and work sites of DBE firms. During these on-site visits, interviews with principal officers are conducted at the principal's place of business, work histories are reviewed, and actual visits to job sites are completed.

- **Records and Documentation:** IDOT must maintain complete and accurate records related to the DBE program, including documentation of all transactions with DBE firms. This includes: records documenting a firm's compliance with the requirements of 49 CFR Part 26, a complete application package for each certified firm, all No Change Affidavits, change notices, and on-site reviews. Monitoring ensures that the records are up to date and accessible for auditing purposes.
- **Prompt Payment:** IDOT must ensure that prime contractors promptly pay DBE subcontractors for work performed on federally funded contracts. Monitoring is necessary to verify that timely payments are being made to DBEs, which helps prevent payment delays.
- **Commercially Useful Function (CUF):** Monitoring is necessary to determine if a DBE firm is performing a "commercially useful function" in the contracted work. This means that the DBE is responsible for performing, managing, and supervising the work it is contracted for and is not functioning merely as a pass-through or front for a non-DBE firm.
- **Good Faith Efforts:** IDOT must monitor the prime contractor's good faith efforts to meet DBE participation goals. Monitoring ensures that prime contractors are actively seeking and soliciting DBEs for subcontracting opportunities and are making reasonable efforts to include them in the project.
- **Compliance Reviews:** Federal agencies, such as the United States Department of Transportation or state transportation agencies, may conduct compliance reviews to assess a recipient's overall compliance with DBE program requirements.

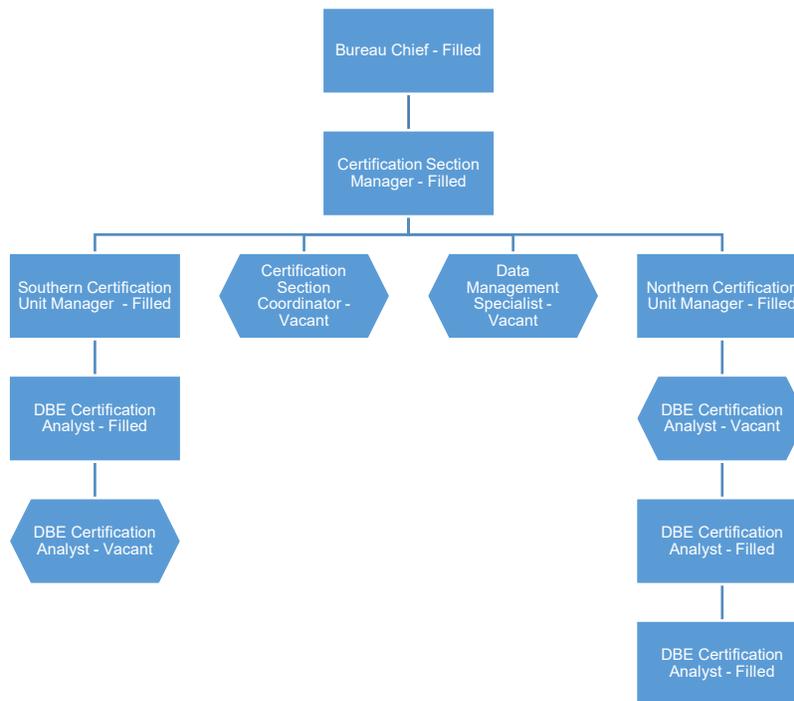
Illinois' DBE Program

IDOT's DBE program was established and administered in accordance with 49 CFR Part 26. Federal assistance from the United States Department of Transportation (USDOT) is based on compliance with 49 CFR Part 26.

IDOT's Bureau of Small Business Enterprises, which is located within the Office of Business and Workplace Diversity, is responsible for the DBE program.

Exhibit 2 shows the organization chart for the Bureau of Small Business Enterprises Certification Section. The organization chart supports there were several vacancies related to certifications.

Exhibit 2
BUREAU OF SMALL BUSINESS ENTERPRISES ORGANIZATIONAL CHART
 Certification Section as of April 16, 2023



Source: Illinois Department of Transportation.

According to IDOT, the duties and responsibilities of the Office of Business and Workplace Diversity include contract compliance, policy and supportive services, and certification. IDOT's policy is to ensure DBEs have an equal opportunity to receive and participate in United States Department of Transportation (USDOT-assisted) contracts. The policy is:

- to ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

- to create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- to ensure that the DBE program is narrowly tailored in accordance with applicable law;
- to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- to help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- to promote the use of DBEs in all types of USDOT-assisted contracts and procurement activities;
- to assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- to provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

DBE Program Size

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

Exhibit 3 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.

IDOT also provided the amount of these contracts that was awarded to DBE contractors. **Exhibit 3** shows that 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 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.

DBE Certification

According to documentation provided by IDOT, the number of new DBE certifications by federal fiscal year in the IL UCP is as follows:

- FFY20 – 347;
- FFY21 – 262; and
- FFY22 – 391.

These figures include certifications by IDOT, the City of Chicago, Chicago Transit Authority, Metra, and Pace. At the time of this analysis, data for FFY23 was not yet available.

Legislative Audit Commission Resolution Number 160 directed the Auditor General to conduct an audit of the **certification** of DBEs. According to IDOT, the Certification Section's responsibilities consist of the following:

- perform comprehensive reviews of DBE certification applications;
- make approval and/or denial recommendations relative to DBE eligibility decisions;
- conduct Personal Net Worth reviews to determine eligibility based on social and economic disadvantage;
- conduct on-site interviews with DBE applicants at both the office and/or jobsite;
- process work category expansion requests from DBE certified firms;
- coordinate appeals with USDOT of applicants who have been denied DBE certification;
- develop and conduct DBE certification workshops and outreach activities;
- maintain the database of all IDOT hosted Illinois Unified Certification Program (IL UCP) DBE applicants;
- attend various outreach functions, events, workshops, and seminars to inform the public on certification processes, the application procedures, and to provide support to interested applicants; and
- maintain the IL UCP Disadvantaged Business Enterprise Directory of certified firms for posting on the IDOT's web site.

Monitoring and Review by IDOT

According to IDOT officials, IDOT has multiple procedures to oversee and monitor DBE certifications. These monitoring procedures include:

- **Initial Application Tracking:** These procedures provide guidance over the application intake process, manager assessment, and review process. The procedure requires interstate applications be processed within 60 days and in-State applications be processed within 90 days.

- **Initial Application Processing:** These procedures include instructions for entering information into the certification database and outline procedures related to the review of the application.
- **DBE Application Summary Report:** Following completion of the file analysis and on-site questionnaire, a summary report is written by a certification analyst. The summary report provides the analyst's recommendation regarding the applicant firm's certification eligibility. The recommendation is presented to the Administrative Review Panel, who makes the final decision regarding the firm's DBE program eligibility.
- **IL UCP Procedures:** The IL UCP Directory lists the firms by the industry categories and IDOT's district(s) in which the firms have indicated they are available to perform work. Pursuant to 49 CFR Part 26, all federal aid recipients implement a "one-stop" certification process for Disadvantaged Business Enterprises. Therefore, DBE program applicants only need to apply once for DBE certification, which will be honored by all participating entities in the IL UCP. The following five entities establish the Illinois Unified Certification Program: IDOT, City of Chicago, Chicago Transit Authority, Metra, and Pace.
- **Administrative Review Process:** The Administrative Review process includes an Administrative Review Panel. According to the Certification Section Policy and Procedures Manual, following completion of the file analysis and on-site questionnaire, a summary report is written by a certification analyst. The summary report provides the analyst's recommendation regarding the applicant firm's certification eligibility. The recommendation is presented to the Administrative Review Panel, who makes the final decision regarding the firm's DBE program eligibility. This Administrative Review Panel process includes monthly reviews of cases for certification, which are reviewed by numerous individuals, including the Administrative Review Panel.

Recertifications are not allowed by 49 CFR Part 26. Rather, DBEs annually complete No Change Affidavits. According to IDOT, certification is valid until a firm no longer meets minimum eligibility standards under 49 CFR Part 26 or fails to cooperate with requests for information. However, DBE firms **are** required by 49 CFR Part 26.83(j) to fill out and submit a No Change Affidavit annually, which requires copies of taxes and other information. The No Change Affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application. Additionally, the No Change Affidavit shall specifically affirm that the firm continues to meet Small Business Administration business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of firm's size and gross receipts.

Recertifications are not allowed by 49 CFR Part 26. DBEs annually complete No Change Affidavits.

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.

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. The determinations are as follows:

- 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;
- Whether the established procedures and processes that govern certification of businesses owned and controlled by minorities, females, or persons with disabilities are being followed;
- 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; and
- Whether the certifications are periodically reviewed to ensure that businesses in the program continue to be qualified for participation.

DBE Certification File Review

The certification files maintained by IDOT were organized and contained large amounts of documentation. Auditors reviewed 25 randomly selected files from firms certified between January 1, 2023 and June 30, 2023. These files were requested to ensure verification procedures regarding socially and economically

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.

disadvantaged status, business size, ownership, and control were adequate. IDOT provided the auditors with all necessary applications.

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.

As part of the process for initial DBE certification, applying firms are provided with a checklist of required and supporting documents (49 CFR Part 26, Appendix E). Applying firms are expected to provide all required documents listed on the checklist. There are also documents required by the Uniform Certification Application that support whether the firm is a partnership or joint venture. **Exhibit 4** shows all required certification documents reviewed by auditors.

DBE Recertification File Review (Known as No Change Affidavits)

No Change Affidavits are submitted by DBE certified firms on an annual basis to confirm that they still meet DBE requirements regarding business size, ownership and control, and the socially and economically disadvantaged status of the firm's owner.

Auditors 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 to determine whether the firms continued to be qualified for participation.

These files included sworn statements from DBE business owners attesting to their firm's maintained DBE status, as well as their federal tax returns. If a firm fails to provide documents requested, appropriate action is taken by IDOT.

Possible actions correlate to which entity is found in non-compliance. For DBE firms, possible actions include denial or removal of certification or eligibility and/or suspension or disbarment. For a primary contractor that uses DBE firms to meet its contract goals, actions may include findings of non-responsibility for future contracts and/or suspension or disbarment.

All No Change Affidavits requested by auditors were provided by IDOT. Auditors found that all files were properly organized and labeled and all files contained the required documentation.

All No Change Affidavits requested by auditors were provided by IDOT. Auditors found that all files were properly organized and labeled and all files contained the required documentation.

Exhibit 4
REQUIRED CERTIFICATION FILE DOCUMENTS

Category	Documentation
Initial Certification Application	<ul style="list-style-type: none"> • Application • Affidavit of Certification (signed and notarized) • Work Location Form • Correspondence between IDOT and applying firm • IDOT summary report
Uniform Certification Application Checklist Documents	<ul style="list-style-type: none"> • Resumes and employment history for all owners, officers, and key personnel of the applicant firm • Personal Net Worth Statement for each socially and economically disadvantaged owner who the applicant firm relies upon to satisfy the 51 percent ownership requirement in 49 CFR Part 26 • Personal federal tax returns for the past three years, if applicable, for each disadvantaged owner • Firm’s federal tax returns filed for the past three years • Documented proof of ownership • Signed loan and security agreements, as well as bonding forms • Equipment list including: vehicles, VIN numbers, copy of titles, proof of ownership, and insurance cards • Titles, registration certificates, and USDOT numbers for each truck owned or operated by the firm • Licenses, license renewal forms, permits, and haul authority forms • Proof of ownership for all real estate owned/leased by the firm • Proof of transfers of assets over the last two years • DBE and Small Business Administration, Small Disadvantaged Business, Minority Business Enterprise/Women Business Enterprise certifications, denials, decertifications, and any USDOT appeal decisions on those actions (if applicable) • Bank authorization and signature cards • Schedule of salaries paid to all officers, managers, owners, and/or directors of the firm • List of all employees, job titles, and dates of employment • Proof of warehouse/storage facility ownership or lease arrangements
Corporation or LLC	<ul style="list-style-type: none"> • Official Articles of Incorporation (signed by state official) • Both sides of all corporate stock certificates and the firm’s stock transfer ledger • Shareholder agreement(s) • Minutes of all stockholder and board of director meetings • Corporate by-laws and any amendments • Corporate bank resolution and signature cards • Official Certificate of Formation and Operating Agreement with any amendments
Additional Documents	<ul style="list-style-type: none"> • Proof of citizenship • Insurance agreements for vehicles owned by firm • Audited financial statements • Trust agreements by any owner claiming disadvantaged status • Year-end balance sheets and income statements for the past three years • List of product lines carried and list of distribution equipment owned/leased

Source: Illinois Department of Transportation.

Oversight by United States Department of Transportation

IDOT receives federal financial assistance from the USDOT and is required by federal law to implement a Disadvantaged Business Enterprise program (DBE). As a recipient of federal funds, IDOT is required to administer the program in compliance with all laws, regulations, executive orders, and guidance. IDOT is also required to sign an assurance of its compliance with USDOT as a condition of continued eligibility for federal financial assistance.

Auditors met with and interviewed an official from the Federal Highway Administration who oversees the DBE program and discussed federal oversight and whether IDOT was in compliance for the DBE certification program. This individual monitors IDOT's program to ensure compliance with the federal rules and regulations that govern the DBE program (49 CFR Part 26). Responsibilities also include conducting site reviews, Commercially Useful Function (CUF) reviews (i.e. management, workforce, equipment, materials, or performance), and reviewing IDOT's Policy and Procedure manual. Other duties include training on CUF, contract compliance, DBE certification, and goal setting.

A Federal Highway Administration official 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.

The official 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. The official also noted that IDOT was in compliance with all training requirements. During the interview, the official noted that there have been no

issues identified during site visits at IDOT or with the No Change Affidavit process.

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 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.

The Legislative Audit Commission (LAC) Resolution Number 160 asks auditors to determine whether procedures for enforcing compliance with federal regulations, including contract termination and contractor suspension, are adequately and uniformly enforced. Based off discussions with IDOT and FHWA officials and a review of documentation, the process appears adequate and uniformly enforced.

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 preferable. 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 FHWA. In lieu of a suspension, they entered into settlement agreements. Once a settlement agreement is reached, IDOT works with the USDOT to come up with criteria for a firm to meet while they undergo a probationary period.

According to IDOT officials, there have been no contract terminations or suspensions recently.

It should be noted that contractor suspension, under CPO authority, and DBE certification suspension, under the Bureau of Small Business Enterprises (SBE) authority, are distinct outcomes addressed by separate processes. The CPO can take action to suspend any firm from contracting. Meanwhile, SBE has independent authority to decertify or suspend a firm's DBE certification.

According to IDOT, investigations of businesses for suspension are started via one of three ways:

1. external complaints or referrals (Attorney General office, hotline, Office of Executive Inspector General, USDOT, other contractors, etc.);
2. internal complaints (a Resident Engineer, Construction Compliance Officer (CCO) from the district, the SBE); or

3. when noncompliance is noted during a Commercially Useful Function (CUF) review.

Auditors interviewed IDOT's CPO regarding contracting suspension. The following are procedures for determining grounds for suspension:

- IDOT's compliance bureau performs field reviews to determine whether work is being completed by the intended party and reports all DBE-related non-compliance to SBE.
- IDOT determines whether the firm being investigated requires a possible contracting suspension. If it is determined that a suspension may be necessary, a recommendation for suspension is made to the CPO.
- If suspension is required, the firm is notified by the CPO immediately and given 30 days to file an appeal.
- If appealed, the firm's case is presented at an administrative hearing, and the firm can be suspended from contracting and contracts terminated or in some cases entered into a settlement agreement.
- If a firm is placed under a settlement agreement, the firm is required to hire an outside compliance monitor to oversee whether the firm is properly executing their agreement with IDOT and the USDOT.

For DBE certification suspension, SBE proceeds according to 49 CFR Part 26.88. A firm's DBE certification may be immediately suspended when there is evidence to believe there has been a material change in circumstances that may affect the eligibility for the DBE firm to remain certified. While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work its does on a contract received during the suspension shall not be counted towards DBE goals.

Expenditures to a DBE contractor only count toward DBE goals if the DBE is performing a CUF on that contract. A DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. If a DBE certified firm is suspected to be under contract, but not performing a CUF, then a CUF Review is performed by IDOT's Construction Compliance Section, which operates within IDOT's Bureau of Investigation and Compliance or the district Contract Compliance Officers. A prime contractor's DBE credit could be removed, or a firm could be placed under certification suspension protocol if that firm undergoes a CUF Review and is found to be in non-compliance. Auditors met with the Construction Compliance Section to ensure their CUF Review database and procedures provided sufficient monitoring of participation in DBE contracts.

If the SBE suspects foul play or non-compliance, the Construction Compliance Section is asked to assist in a more thorough review. However, the Construction Compliance Section clarified that actions taken against firms found to be non-compliant in CUF Reviews are typically corrective, not punitive. According to

the Construction Compliance Section, most corrective action is taken towards prime contractors and that good faith efforts taken by prime contractors to ensure full compliance typically remedies issues found in more thorough CUF Reviews. Additionally, a failed CUF Review does not necessarily result in removal or suspension of DBE certification but may cause an inquiry and removal of a category if a firm does not have the ability to control the category.

Auditors also met with FHWA officials and asked about federal oversight regarding contract suspension. The FHWA clarified that although firms can be suspended from bidding on IDOT work, their DBE status remains intact. The FHWA further clarified that there is a process for removing/replacing a DBE firm from a contract that involves several contractor steps required by SBE's compliance section, including:

- five day notice of removal to DBE contractor;
- proper cause for the firm's removal from their contract;
- formal request for removal of the firm submitted to IDOT; and
- proof of a good faith effort to replace the firm with another DBE.

Lastly, the FHWA provided details regarding cause for temporary summary suspension of DBE certification. The FHWA cited examples of the firm's owner going to jail or the death of a firm's owner as possible reasons for summary suspension of a DBE certification. Since both causes for suspension pertain directly to ownership, investigations are conducted by IDOT's SBE Certification Section. The most common certification suspensions have been for the death of an owner. FHWA officials confirmed that while federal monitoring procedures are uniformly enforced, only two firms have recently undergone a contracting suspension.

IDOT DBE Goals

According to documentation provided by IDOT, it has not met its aspirational DBE goals. 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.

Legislative Audit Commission Resolution Number 160 required auditors to determine whether recent DBE goals established by IDOT have been met. An overall DBE participation goal must be set for DOT-assisted contracts, in accordance with 49 CFR Part 26.45. However, IDOT is not permitted to use quotas for DBEs on these contracts subject to the Part 49 CFR 26.43. Furthermore, 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.

According to documentation provided by IDOT, it has not met its aspirational DBE goals as shown in **Exhibit 5**. From 2018 to 2021, IDOT’s aspirational DBE goal was 18.70 percent. For 2022, IDOT raised its aspirational goal to 20.27 percent. During the last five federal fiscal years, the closest IDOT has come to reaching its aspirational DBE goal was in 2021 when the goal was 18.70 percent, and it reached 15.92 percent, which was 2.78 percent below the goal. For Federal Fiscal Year 2022, IDOT’s aspirational DBE goal was 20.27 percent, and IDOT reported 15.83 percent, which was 4.44 percent below the goal. The goal is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all ready, willing, and able businesses to perform the recipient’s anticipated FHWA-assisted contracts.

According to IDOT’s FFY22-FFY24 goal setting methodology, IDOT submits its DBE Goal Setting Methodology Reports to the FHWA for review and approval, in accordance with 49 CFR Part 26. IDOT is expected to make a good faith effort to meet its overall annual aspirational DBE goal each year during the three-year period.

Exhibit 5 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.

IDOT cites the following factors as contributing to the deficiency in achieving their DBE goal:

- DBE availability in key work types and work categories;
- geographic barriers to participation;
- DBE capacity;
- non-competitive quotes; and
- limited opportunity due to “shovel ready” projects.

Auditors discussed the DBE goals with the official from the FHWA and determined that IDOT has never met its DBE goals. It was further noted that only a “handful” of states meet their DBE goals and that most do not. Auditors requested information on the exact number of states who met the DBE goals, but the information was not provided prior to the release of this audit. The FHWA official noted that states are not penalized for not meeting their goals. It was also noted that the FHWA only approves the methodology the states use to meet their goals and not the goals. The DBE goals are tracked through the submission of a semi-annual document titled “The Uniform Report of DBE Awards/Commitments and Payments.” If the annual DBE goal is not met, IDOT is required to submit a report titled “Shortfall Analysis and Corrective Action Plan.”

Even though IDOT is not meeting its aspirational DBE goal, IDOT is making a good faith effort to meet it. Thus, there are no penalties assessed by the FHWA. However, IDOT should continue working toward increasing its participation goal to help create a level playing field for socially and economically disadvantaged individuals to participate in transportation-related contracts.

DBE Goals	
RECOMMENDATION NUMBER 1	<i>The Illinois Department of Transportation should continue working to meet its aspirational DBE goals in accordance with 49 CFR Part 26.45.</i>
<p>IDOT Response:</p> <p>In response to your recommendation, from 2018 to 2021, IDOT’s aspirational DBE goal was 18.70 percent. DBE participation during those years was 13.49 percent, 15.05 percent, 13.06 percent, and 15.92 percent, respectively. For 2022, of its own volition, IDOT ambitiously raised its aspirational goal to 20.27 percent, inspired to achieve higher DBE participation on contracts. While DBE participation in 2022 was 15.83 percent, IDOT continues to believe that prospective, large-scale projects in its Multi-Year Plan under Rebuild Illinois will include more opportunities for DBEs. As a means of continuing to work towards its aspirational goals, IDOT has established the following steps, which have been approved by FHWA:</p> <ul style="list-style-type: none"> • Increase the number of DBE firms that improve their financial self-sufficiency by becoming bondable, increasing bonding capacity, and/or obtaining financing. 	

- Increase the number of DBE firms whose equipment/resource needs are adequately addressed.
 - Increase the number of DBE firms that obtain work with or as prime contractors.
 - Increase the number of DBE firms that become more proficient in preparing cost estimates for bidding.
 - Increase the number of DBE firms that develop strategic planning, training goals, and business planning.
 - Increase the number of DBE firms that develop/implement an accounting system or evaluate/improve an existing system.
 - Increase the number of DBE firms that effectively market their own business.
 - Identify barriers to participation of DBEs.
 - Increase DBE program promotion and outreach.
-

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 Federal Highway Administration noted that IDOT was in compliance with all training requirements.

According to IDOT officials, 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. The USDOT developed nine training modules for the UCP that may be found online at the Departmental Office of Civil Rights' website. The Illinois Unified Certification Program (UCP) is responsible for ensuring that all of their DBE/ACDBE (Airport Concessions Disadvantaged Business Enterprise) certification application review staff are properly trained. The USDOT training modules are accessible through the USDOT website and includes the following:

1. Module 1: Basic Concepts
2. Module 2: DBE/ACDBE Certification
3. Module 3: The Small Business Requirement
4. Module 4: Ownership/Control
5. Module 5: Individual Determinations of Social and Economic Disadvantage
6. Module 6: Economic Disadvantage and Personal Net Worth
7. Module 7: On-Site Reviews, Procedures, and Interstate Matters
8. Module 8: Fraud Detection and Prevention
9. Module 9: Airport Concession DBE

Any new, revised, or updated versions of these training modules must also be completed by certification staff as soon as they are made available by the Departmental Office of Civil Rights. The UCP is responsible for documenting their certification staff's completion of mandatory training, as well as their viewing of the Departmental Office of Civil Rights' "Recorded Presentation of the Rule," which describes changes to the DBE rules instituted through the USDOT final rule issued October 2, 2014. Any UCP certification staff who are not up to date with these mandatory trainings and viewings should not be permitted to review certification applications.

Certification staff trainees are provided with access to 49 CFR Part 26 and 13 CFR Part 121 to familiarize themselves with the regulations that govern the DBE program and discussion. They are also required to complete the Federal Highway Administration's online DBE training, as well as accompany Certification Unit managers to on-site interviews to familiarize themselves with on-site processes. These processes include:

- Interviewing socially and economically disadvantaged owners and key personnel of the firm;

- Performing walkthroughs of offices, equipment storage sites, and job sites; and
- Taking pictures of the office space and equipment.

IDOT's Bureau of Small Business Enterprise provided the auditors with its organization chart, listing every DBE certification officer currently employed by IDOT. Auditors determined the DBE training certification materials provided by

Auditors determined the DBE training certification materials provided by IDOT for its certification staff, met the qualifications required by the FHWA.

IDOT for its certification staff, met the qualifications required by the FHWA. IDOT utilized the American Contract Compliance Association (ACCA) for additional, optional certification and compliance training. Upon completing this training, a DBE Certification Analyst receives a Compliance Administrator Certification. ACCA training, as provided by the National Training Institute (NTI),

provides trainees with scheduled workshops held during the annual NTI training conference. IDOT's DBE program provided auditors with a list of these workshops, as well as documentation verifying that ACCA training was required to be a fully trained DBE Certification Analyst. IDOT noted its staff had received all required training.

As noted earlier in the report, the Federal Highway Administration noted that IDOT was in compliance with all training requirements.

Appendix A

Legislative Audit Commission Resolution Number 160

Legislative Audit Commission

Resolution No. 160

Presented by Representative Marcus Evans

WHEREAS, It is the public policy of the State to promote and encourage the continuing economic development of minority-owned and women-owned and operated businesses and that minority-owned and women-owned operated businesses participate in the State's procurement process as both prime and subcontractors; and

WHEREAS, It is also the public policy of this State to promote and encourage the continuous economic development of businesses owned by persons with disabilities; and

WHEREAS, The Disadvantaged Business Enterprise (DBE) program is a federally mandated program (49 CFR Pt. 26) intended to ensure nondiscriminatory contracting opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the United States Department of Transportation's (US DOT) highway, mass transit, and airport financial assistance programs; and

WHEREAS, the objectives of 49 CFR Pt. 26 are to ensure nondiscrimination in the award and administration of US DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs; to create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts; and to ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs; and

WHEREAS, It is mandated by the United States Department of Transportation that an overall participation goal is set and that the overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs; and

WHEREAS, The DBE program administered by the Illinois Department of Transportation (IDOT) 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; and

WHEREAS, DBE goals are placed on projects, and prime contractors must utilize DBE firms to meet those goals; and

WHEREAS, IDOT implements the requirements of the Federal DBE program through the Illinois Unified Certification Program (IL UCP); and

WHEREAS, In 2017, IDOT conducted a disparity study to help inform the agency's implementation of the DBE program; and

WHEREAS, in 2006, the Auditor General released an audit of IDOT's DBE Program and it has been 15 years since the last time the State's DBE program was thoroughly examined; therefore, be it

RESOLVED, BY THE LEGISLATIVE AUDIT COMMISSION, that the Auditor General is directed to conduct a performance audit of the Illinois Department of Transportation's certification of businesses as DBEs through the IL UCP; and be it further

RESOLVED, that the performance audit include but not be limited to, the following determinations:

- 1) 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;
- 2) Whether the established procedures and processes that govern certification of businesses owned and controlled by minorities, females, or persons with disabilities are being followed;
- 3) Whether staff responsible for certification of these businesses have received adequate training;
- 4) 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;
- 5) Whether the certifications are periodically reviewed to ensure that businesses in the program continue to be qualified for participation;
- 6) Whether procedures for enforcing compliance with federal regulations, including contract termination and contractor suspension, are adequate and uniformly enforced;
- 7) Whether recent DBE goals established by IDOT have been met; and be it further

RESOLVED, that the Illinois Department of Transportation, as well as any other entity that may have information pertaining to this audit, cooperate fully and promptly with the Auditor General's Office in the conduct of this audit; and be it further

RESOLVED, that the Auditor General commence this audit as soon as possible and report his findings and recommendations, upon completion in accordance with the provisions of Section 3-14 of the Illinois State Auditing Act; and be it further

RESOLVED, that a copy of this resolution be delivered to the Auditor General and the Illinois Department of Transportation.

Adopted this 1st day of September, 2021.



SIGNED ORIGINAL ON FILE

Senator Jason Barickman
Co-Chair, Legislative Audit Commission

SIGNED ORIGINAL ON FILE

Representative Fred Crespo
Co-Chair, Legislative Audit Commission

Appendix B

Audit Scope and Methodology

This audit was conducted in accordance with the audit standards promulgated by the Office of the Auditor General at 74 Ill. Adm. Code 420.310.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives were delineated by Legislative Audit Commission (LAC) Resolution Number 160, which directed the Auditor General to conduct a performance audit of the Illinois Department of Transportation's (IDOT's) Disadvantaged Business Enterprise (DBE) program. The Resolution contained several specific determinations (see Appendix A). While the audit resolution was adopted September 1, 2021, due to staffing issues and workload prioritization, the audit was not initiated until May 2023. Fieldwork was conducted in November and December 2023.

In conducting this audit, auditors reviewed applicable State statutes and rules, as well as federal regulations (49 CFR Part 26 and 13 CFR Part 121). Auditors also reviewed all controls and procedures related to DBE certification, renewal of DBE certification, employee training, contract termination, and contractor suspension. Auditors examined the five components of internal control – control environment, risk assessment, control activities, information and communication, and monitoring – along with the underlying principles. Any deficiencies in internal controls and monitoring that were significant within the context of the audit objectives are discussed in the body of the report. Auditors also held a fraud risk meeting to examine how the risk of fraud related to determinations made in LAC Resolution Number 160. Auditors requested and reviewed specific documents and other information related to the DBE program. These included initial DBE certifications, No Change Affidavits, shortfall analyses, electronic monitoring files, DBE contract information, organizational charts, other state audits and studies, training requirements and procedures, and IL UCP data.

During this audit, auditors conducted interviews and phone conferences with officials from IDOT and the United States Department of Transportation. Auditors met with IDOT's Office of Procurement to determine whether federal regulations regarding contract termination and contractor summary suspension were being adequately and uniformly enforced. Auditors met with officials from IDOT's Construction Compliance Section for the same reason, while also requesting information on Commercially Useful Function Reviews performed by both IDOT and the Small Business Enterprise. Auditors met with Small Business Enterprise officials to determine the extent of their monitoring procedures regarding Commercially Useful Function Reviews and fulfillment of DBE

contract goals for prime contractors. Auditors met with a Civil Rights Specialist from the USDOT to examine the level of federal oversight within IDOT’s DBE program, gain a better understanding of contractor summary suspension, and identify aspects of IDOT’s DBE certification processes the USDOT deemed to be in non-compliance. Auditors also communicated with IDOT’s Certification Officers, Compliance Officers, and Internal Auditors on a continual basis via Suralink, email, in-person meetings, and phone conferences, to request documentation, follow up on fieldwork data, and discuss findings as they related to the determinations made in LAC Resolution Number 160.

Review of Certifications and No Change Affidavits

Auditors reviewed files on site to test IDOT’s DBE certifications, as well as their No Change Affidavits. Certification samples were randomly selected from certifications approved between January 1, 2023, and June 30, 2023. There were 36 certifications during that period. Auditors randomly selected and reviewed 25 of the 36. In order to select the No Change Affidavits for review, auditors randomly selected 25 from 841 certifications from FY21, FY22, and FY23. Auditors used random samples that were not statically valid for both the initial DBE certification and No Change Affidavit testing. Therefore, the results of the testing cannot be projected to the entire population of firms with DBE status.

The date of the Exit Conference, along with the principal attendees are noted below:

IDOT Exit Conference		March 7, 2024
Agency	Name and Title	
Illinois Department of Transportation	<ul style="list-style-type: none"> • Omer Osman, Secretary of Transportation • Terrance Glavin, Deputy Secretary of Administration, Diversity, and Legal Affairs • Brandy Phillips, Director of Office of Business and Workforce Diversity • Debra Clark, Former Manager of DBE Certification • Stephen Kirk, Chief Internal Auditor • Kayla Routh, External Audit Coordinator • Samantha Fritz, External Audit Coordinator 	
Illinois Office of the Auditor General	<ul style="list-style-type: none"> • Scott Wahlbrink, Senior Audit Manager • Kody Freeman, Audit Supervisor • Will Londrigan, Audit Staff 	

Appendix C

Agency Responses



Illinois Department of Transportation

Office of the Secretary
2300 South Dirksen Parkway / Springfield, Illinois / 62764
Telephone 217/782-6149

March 12, 2024

Auditor General Mautino
Illinois Office of the Auditor General
400 W. Monroe, Suite 306
Springfield, Illinois 62704

Re: Legislative Audit Commission Resolution Number 160
Performance Audit of DBE Certification
IDOT Response to Recommendation

Dear Auditor General Mautino:

This letter is in response to the Office of the Auditor General (OAG) performance audit of the Illinois Department of Transportation (IDOT) certification of Disadvantaged Business Enterprises (DBEs). IDOT commends the OAG for its diligence and professionalism when conducting the audit in accordance with Legislative Audit Commission Resolution Number 160.

Through its DBE program, in compliance with applicable law, IDOT strives to achieve several objectives including, but not limited to, nondiscrimination in the award and administration of contracts as well as a level playing field on which DBEs can compete fairly for contracts. Consistent with these efforts, the OAG made several favorable findings (e.g., well-organized files, a large amount of documentation, Federal Highway Administration official's acknowledgement of IDOT compliance with all aspects of the DBE certification process).

In its report, the OAG also provided a recommendation for improvement, indicating that IDOT should continue working to meet its aspirational DBE goals in accordance with C.F.R. Part 26.45. The goal is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all ready, willing, and able businesses to perform IDOT's anticipated FHWA-assisted contracts.

Response to Recommendation:

In response to your recommendation, from 2018 to 2021, IDOT's aspirational DBE goal was 18.70 percent. DBE participation during those years was 13.49 percent, 15.05 percent, 13.06 percent, and 15.92 percent, respectively. For 2022, of its own volition, IDOT ambitiously raised its aspirational goal to 20.27 percent, inspired to achieve higher DBE participation on contracts. While DBE participation in 2022 was 15.83 percent, IDOT continues to believe that prospective, large-scale projects in its Multi-Year Plan under Rebuild Illinois will include more opportunities for DBEs. As a means of continuing to work towards

Auditor General Mautino
March 12, 2024
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its aspirational goals, IDOT has established the following steps, which have been approved by FHWA:

- Increase the number of DBE firms that improve their financial self-sufficiency by becoming bondable, increasing bonding capacity, and/or obtaining financing.
- Increase the number of DBE firms whose equipment/resource needs are adequately addressed.
- Increase the number of DBE firms that obtain work with or as prime contractors.
- Increase the number of DBE firms that become more proficient in preparing cost estimates for bidding.
- Increase the number of DBE firms that develop strategic planning, training goals, and business planning.
- Increase the number of DBE firms that develop/implement an accounting system or evaluate/improve an existing system.
- Increase the number of DBE firms that effectively market their own business.
- Identify barriers to participation of DBEs.
- Increase DBE program promotion and outreach.

If you have any questions, you may contact the IDOT Office of Business and Workforce Diversity Director, Brandy Phillips, at (312) 793-3940.

Sincerely,

SIGNED ORIGINAL ON FILE

Omer M. Osman, P.E.
Secretary

Cc:
Scott Wahlbrink, Senior Manager
Stephen Kirk, Chief Internal Auditor
Terry Glavin, Deputy Secretary
Brandy Phillips, OBWD Director

