

# Office of the Auditor General

## Performance Audit Report

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# Office of Business Development

## Michigan Department of Transportation

June 2016

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**The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.**

*Article IV, Section 53 of the Michigan Constitution*

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Office of the Auditor General

## Report Summary

### *Performance Audit*

### *Office of Business Development (OBD)*

### *Michigan Department of Transportation (MDOT)*

**Report Number:**  
591-0350-15

**Released:**  
June 2016

OBD is responsible for the certification of disadvantaged business enterprise (DBE) eligible firms and oversight of these firms once certified to participate in MDOT's DBE Program. OBD is also responsible for the implementation and oversight of MDOT's On-the-Job Training (OJT) Program and for performance of equal employment opportunity (EEO) contract compliance reviews for MDOT construction contractors receiving federal funds.

Audit Objective			Conclusion
Objective #1: To assess the sufficiency of OBD's efforts to ensure compliance with DBE Program certification requirements.			Sufficient with exceptions
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
OBD needs to improve the timeliness of its certification decisions for DBE applicants. These decisions did not occur within the 90-day requirement for over 50% of the DBE applications we reviewed ( <u>Finding #1</u> ).	X		Agrees
OBD needs to improve its monitoring of certified DBE firms' compliance with annual affidavit requirements. Forty (11%) DBE firms did not submit any annual affidavits to OBD and 35% of sampled DBE firms did not submit all required annual affidavits ( <u>Finding #2</u> ).		X	Agrees
MDOT could improve its monitoring related to DBE firms' compliance with performing a commercially useful function (CUF). MDOT project managers did not communicate to OBD their results for 326 (42%) of 769 construction contract project CUF reviews. In addition, OBD infrequently documented its follow-up activities related to CUF reviews ( <u>Finding #3</u> ).		X	Agrees

<b>Audit Objective</b>			<b>Conclusion</b>
Objective #2: To assess the sufficiency of OBD's efforts to ensure compliance with OJT Program requirements.			Sufficient with exceptions
<b>Findings Related to This Audit Objective</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
OBD needs to continue improvement in its monitoring of contractors' compliance with OJT Program requirements. Seven (13%) of 55 contractors did not fulfill their OJT trainee assignments for 2013 and 16 (27%) of 59 did not fulfill them for 2014 ( <u>Finding #4</u> ).		X	Agrees
OBD needs to improve its monitoring of contractors' monthly OJT reporting and its annual OJT reporting to the Federal Highway Administration (FHWA). A risk exists that future OBD reports to FHWA could be significantly misstated ( <u>Finding #5</u> ).		X	Agrees

<b>Audit Objective</b>			<b>Conclusion</b>
Objective #3: To assess the effectiveness of OBD's efforts to ensure that contractors are in compliance with EEO regulations.			Effective
<b>Findings Related to This Audit Objective</b>	<b>Material Condition</b>	<b>Reportable Condition</b>	<b>Agency Preliminary Response</b>
None reported.	Not applicable	Not applicable	Not applicable

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: [www.audgen.michigan.gov](http://www.audgen.michigan.gov)

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# OAG

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**Doug A. Ringler, CPA, CIA**  
Auditor General

June 2, 2016

Mr. Todd Wyett, Chair  
State Transportation Commission  
and  
Kirk T. Steudle, PE, Director  
Michigan Department of Transportation  
Murray Van Wagoner Transportation Building  
Lansing, Michigan

Dear Mr. Wyett and Mr. Steudle:

I am pleased to provide this performance audit report on the Office of Business Development, Michigan Department of Transportation.

We organize our findings and observations by audit objective. Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days of the date above to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler  
Auditor General



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# AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

# COMPLIANCE WITH DBE PROGRAM CERTIFICATION REQUIREMENTS

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## BACKGROUND

The Michigan Department of Transportation's (MDOT's) Disadvantaged Business Enterprise\* (DBE) Program\* is a federally required program designed to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient through participation in federally funded MDOT contracts. MDOT's Office of Business Development (OBD) is responsible for the certification and oversight of eligible firms for participation in MDOT's DBE Program.

OBD's DBE certification procedures are designed to ensure that all firms participating in the Program meet the eligibility standards as defined by the United States Department of Transportation (USDOT). DBE applicant firms submit a certification application, which USDOT requires OBD to make a certification decision on within 90 days of receipt of all required applicant information. Each certified DBE firm submits to OBD an annual notarized affidavit to confirm that there have been no changes which would affect the firm's eligibility to continue participation in the Program.

Certified DBE firms working on federal-aid construction contracts are required to perform a commercially useful function (CUF). To monitor compliance, MDOT project managers conduct field reviews of DBE firms' CUF activities and report results to OBD.

During the period October 1, 2012 through March 31, 2015, MDOT awarded DBE firms \$201 million of the total \$2.6 billion MDOT federal-aid construction contracts. As of June 30, 2015, there were 369 MDOT-certified DBE firms.

## AUDIT OBJECTIVE

To assess the sufficiency of OBD's efforts to ensure compliance with DBE Program certification requirements.

## CONCLUSION

Sufficient with exceptions.

## FACTORS IMPACTING CONCLUSION

- OBD obtained and reviewed all documentation necessary to determine compliance with eligibility requirements for initial DBE certification for all 19 DBE application files we reviewed.

\* See glossary at end of report for definition.

- OBD obtained and reviewed all documentation necessary to determine compliance with eligibility requirements for continued DBE certification for all of the 20 DBE annual affidavit files tested.
- Reportable conditions\* related to improving:
  - OBD's monitoring of certified DBE firms' compliance with submitting all required annual affidavits.
  - MDOT's monitoring of certified DBE firms' compliance with requirements for performing a CUF.
- Material condition\* related to OBD's untimely decisions on DBE certification applications.

*\* See glossary at end of report for definition.*

## **FINDING #1**

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**Improvements needed to make DBE certification decisions more timely.**

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OBD did not make a DBE certification decision within 90 days for over 50% of the applications reviewed.

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OBD needs to improve the timeliness of its certification decisions for DBE applicants. More timely decisions would help MDOT ensure that it provides eligible DBE applicants equal opportunity to compete for federal-aid construction contracts.

USDOT requires MDOT to make certification decisions on DBE applications within 90 days of receiving all required applicant information.

We randomly sampled 19 of the 151 completed DBE applications submitted from October 2012 through June 2015. In addition, we reviewed the 28 open DBE applications that OBD received during the same period but had not made its decision on as of June 30, 2015. We noted:

- a. OBD did not complete its decision within 90 days for 11 (58%) of the 19 sampled applications. Decisions for these 11 applications ranged from 10 to 254 days late and averaged 96 days late.
- b. OBD did not make a decision within 90 days for 16 (57%) of the 28 open applications. Decisions were outstanding for these 16 applications from 90 to 434 days and, on average, for 213 days as of June 30, 2015.

MDOT informed us that these conditions were likely a result of unforeseen changes in OBD staffing levels during the audit period.

## **RECOMMENDATION**

We recommend that OBD improve the timeliness of its certification decisions for DBE applicants.

## **AGENCY PRELIMINARY RESPONSE**

MDOT provided us with the following response:

*MDOT agrees with the recommendation.*

*MDOT has dedicated resources for making timely decisions on new certification applications. Also, MDOT is endeavoring to develop and implement a streamlined process for efficiently using resources to meet all regulatory requirements.*

## FINDING #2

**Improved monitoring is needed to ensure that DBE firms comply with annual affidavit requirements for continued Program eligibility.**

OBD did not take action to discontinue DBE Program participation for 40 (11%) firms that did not submit any annual affidavits during the audit period.

OBD needs to improve its monitoring of certified DBE firms' compliance with annual affidavit requirements to help ensure that only eligible firms participate in MDOT's DBE Program.

USDOT requires each firm participating in the DBE Program to provide an annual affidavit declaring its unchanged eligibility status on the firm's certification anniversary date. MDOT requires the affidavit to be notarized in order to continue a firm's Program eligibility. A certified DBE firm's noncompliance with submitting affidavits can result in the firm's removal from the Program.

We reviewed OBD's database records for the receipt of affidavits for all 369 certified active DBE firms as of the end of the audit period. In addition, we identified 189 certified firms that had submitted at least one affidavit and had at least one affidavit approved by OBD during the audit period. We randomly sampled and reviewed 20 of these 189 to determine if the firms had timely submitted all required affidavits due during the audit period. We noted:

- a. OBD did not ensure that certified DBE firms consistently provided affidavits:
  - (1) Forty (11%) of the 369 certified DBE firms did not submit any affidavits to OBD. Each of these 40 firms had between 1 and 3 affidavits due, and in total, the firms did not submit 63 affidavits. OBD did not discontinue these firms' participation in the DBE Program and informed us that 3 (8%) of the 40 firms continued to perform MDOT work.
  - (2) Seven (35%) of the 20 sampled certified DBE firms did not submit all of their required affidavits. These 7 firms did not submit a total of 12 required affidavits. OBD did not initiate actions to discontinue these firms' participation and informed us that 3 (43%) of these 7 firms continued to perform MDOT work.
- b. OBD did not ensure that certified DBE firms provided affidavits on a timely basis.

Ten (50%) of the 20 sampled certified firms did not submit their affidavits by the due date. These affidavits were between 5 and 202 days late and averaged 83 days late. OBD informed us that 3 (30%) of these 10 firms continued to perform MDOT work.

MDOT informed us that these conditions were likely a result of unforeseen changes in OBD staffing levels during the audit period.

Without regular and timely annual affidavit information from certified DBE firms, MDOT could reduce its ability to proactively and effectively detect and prevent the participation of ineligible firms in MDOT's DBE Program.

**RECOMMENDATION**

We recommend that OBD improve its monitoring of certified DBE firms' compliance with annual affidavit requirements to help ensure that only eligible firms participate in MDOT's DBE Program.

**AGENCY  
PRELIMINARY  
RESPONSE**

MDOT provided us with the following response:

*MDOT agrees with the recommendation.*

*MDOT has dedicated resources to monitor and help ensure the timely submission of all annual affidavits and is implementing a process to better identify and take timely action on DBE firms that are in noncompliance with program requirements.*

*MDOT is implementing a new database that tracks each DBE firm's affidavit deadlines and submissions. Firms that have not submitted their affidavits are issued noncompliance notifications. This database also facilitates monthly forecasting of required DBE affidavit receipts, which allows MDOT staff to proactively remind DBE firms of their upcoming deadlines.*

## FINDING #3

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**Improved monitoring would help ensure that DBE firms perform a CUF when working on federal-aid construction projects.**

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MDOT project managers did not consistently provide OBD with the results of CUF field monitoring reviews of DBE firms.

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MDOT could improve its monitoring of DBE firms by strengthening the communication among MDOT divisions and enhancing documentation of follow-up results to assist OBD with its responsibility to ensure that firms performed a CUF.

USDOT and MDOT require DBE firms to comply with CUF regulations when working on federal-aid construction contracts. A DBE firm performs a CUF when it is responsible for execution of the contracted work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. USDOT regulations require that MDOT's DBE Program include a CUF monitoring mechanism to verify that firms actually performed the work committed to the firm at the time of the contract award.

We reviewed OBD's tracking records for 769 MDOT construction contract projects with work committed to a DBE firm that was required to have a CUF review during the period October 1, 2012 through June 30, 2015. We noted:

- a. MDOT project managers did not submit 326 (42%) CUF review forms to OBD.

MDOT's CUF compliance procedures require that project managers conduct field monitoring of prime contractors to ensure that contracted certified DBE firms perform a CUF. In addition, the procedures require MDOT project managers to document contractor field monitoring on a CUF Review Form and provide the completed form to OBD. OBD uses the completed CUF Review Form as its primary tool to monitor a firm's performance of the required CUF.

- b. OBD did not document the results of its follow-up for 50 (96%) of 52 CUF reviews that indicated follow-up was needed.

Documenting the results would strengthen OBD's assurance that DBE firms performed the required CUF for the MDOT construction project to which they were committed.

- c. MDOT's CUF compliance procedures did not provide for communication of final estimate submittal forms for completed construction projects to OBD from the MDOT project managers. The project manager completes this form at the end of each construction project to certify that the DBE firm performed the required CUF for the project.

Providing the project manager's certification to OBD that the DBE firm performed the required CUF would enhance OBD's ability to effectively monitor the firm's compliance with the Program requirements.

OBD believed that it did not have the authority to compel MDOT project managers to consistently provide OBD with the completed CUF review forms. Also, OBD did not instruct its staff of the appropriate follow-up documentation to obtain when the CUF review form indicated that follow-up was needed.

**RECOMMENDATION**

We recommend MDOT improve its monitoring of DBE firms by strengthening communication among MDOT divisions and enhancing documentation of follow-up results related to DBE firms' performance of a CUF.

**AGENCY  
PRELIMINARY  
RESPONSE**

MDOT provided us with the following response:

*MDOT agrees with the recommendation.*

*MDOT has dedicated resources of applicable divisions to monitor performance of commercially useful function requirements by DBE firms. MDOT will create a risk-based prioritization process for approval by the Federal Highway Administration. The process will identify when follow-up is needed and the applicable required documentation.*



## COMPLIANCE WITH OJT PROGRAM REQUIREMENTS

### BACKGROUND

MDOT's On-the-Job Training (OJT) Program\* was created by the Federal Highway Administration (FHWA) and MDOT with the primary purpose of offering equal opportunity for the training and upgrading to minorities, women, and disadvantaged persons toward journey-level status in the highway construction trades. OBD is responsible for the implementation and oversight of MDOT's OJT Program.

MDOT's OJT Program is designed to increase the participation of minorities, women, and disadvantaged persons in construction skilled trades on MDOT federal-aid construction contracts for prequalified\* contractors whose three-year average of annual federal-aid gross receipts exceeds \$3 million. Annually, OBD assigns contractors a required number of OJT trainees for the year based on the three-year average of MDOT's federal aid portion provided to the contractor as follows:

Three-Year Average of MDOT's Federal Aid Portion (in Millions)	Number of OJT Trainee Assignments
\$0 to \$2.99	0
\$3.00 to \$8.99	1
\$9.00 to \$13.49	2
\$13.50 to \$17.99	3
\$18.00 to \$22.49	4
\$22.50 to \$26.99	5
\$27.00 to \$31.49	6
\$31.50 to \$35.99	7
\$36.00 to \$40.49	8
\$40.50 to \$44.99	9
\$45.00 to \$49.49	10
Each additional \$4.50	1 additional trainee

Per federal requirements, each contractor must submit an annual plan that describes the contractor's OJT program and identifies the OJT trainees that the contractor has selected to fulfill its annual trainee assignments. In addition, MDOT requires that contractors must maintain a training log for each OJT trainee that documents the dates and the number of hours the trainee worked in each job skill performed for each pay period. Each contractor must provide its training logs to OBD monthly for each OJT trainee. OBD uses the contractors' monthly report information to evaluate and monitor the status of the contractors' efforts to meet their OJT Program requirements and to track OJT trainee participation.

\* See glossary at end of report for definition.

MDOT provides FHWA with an annual report of its OJT Program activities and accomplishments that includes the total number of OJT trainees that were enrolled in the Program, that completed the Program, and that contractors terminated from the Program.

As of June 30, 2015, 64 MDOT federal-aid contractors employed 177 OJT trainees.

**AUDIT OBJECTIVE**

To assess the sufficiency of OBD's efforts to ensure compliance with OJT Program requirements.

**CONCLUSION**

Sufficient with exceptions.

**FACTORS  
IMPACTING  
CONCLUSION**

- OBD hired an individual dedicated to oversight of the OJT Program during 2014 and obtained, approved, or issued a noncompliance letter for 100% of contractors' OJT Program annual plans we reviewed for calendar year 2015. This was a significant improvement over calendar years 2013 and 2014.
- OBD's OJT database records for tracking OJT trainee participation hours reconciled with the hours worked information that contractors reported for 97% of the monthly hours reports we reviewed.
- OBD reported total numbers of OJT trainees to FHWA that were 95% and 92% accurate for calendar years 2013 and 2014, respectively.
- Of all contractors required to have OJT trainees, 87%, 73%, and 97% fulfilled their OJT trainee assignments, requested waivers, or were issued a noncompliance letter for calendar years 2013, 2014, and 2015, respectively.
- Of sampled contractors, 43% submitted all required monthly reports for all OJT trainees during the audit period.
- Reportable conditions related to improving:
  - OBD's monitoring of contractors' compliance with fulfillment of OJT trainee assignments.
  - OBD's monitoring of contractors' monthly OJT reports and OBD's calculation of the number of OJT trainees participating in MDOT's OJT Program and reported to FHWA.

## **FINDING #4**

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**Continued improvement in monitoring needed to ensure that contractors provide OJT opportunities to minorities, women, and disadvantaged individuals.**

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OBD needs to continue to improve its monitoring of federal-aid contractors' compliance with OJT Program requirements for fulfilling trainee assignments. Improved monitoring would help MDOT ensure that these contractors adhere to the requirements to provide OJT Program opportunities to minorities, women, and disadvantaged individuals aimed at achieving journey-level positions.

FHWA requires federal-aid contractors to provide OJT aimed at developing trainees into full journey-level status and to provide periodic reports documenting their efforts. MDOT monitors contractors' compliance by means of contractor reporting and tracking OJT trainees' participation in its OJT database.

We compared OBD's OJT trainee assignment reports to the OJT database trainee information reported by the 55, 59, and 64 federal-aid contractors with at least one assigned OJT trainee for calendar years 2013, 2014, and 2015, respectively. Contractors not filling their assigned trainee positions during calendar years 2013 and 2014 were not identified by OBD's monitoring, nor did OBD issue noncompliance letters to the contractors. We noted improvement in calendar year 2015; however, our comparison disclosed:

- a. Seven (13%) of the 55 contractors did not fill 9 (47%) of their 19 assigned trainee positions for calendar year 2013.
- b. Sixteen (27%) of the 59 contractors did not fill 20 (67%) of their 30 assigned trainee positions for calendar year 2014.

OJT Program requirements state that if a contractor fails to place the appropriate number of trainees, the result may be a finding of noncompliance with FHWA requirements. Contractor noncompliance with the OJT Program requirements could result in the revocation of the contractor's prequalification status to bid on MDOT construction contracts.

MDOT informed us that these conditions were likely a result of unforeseen changes in OBD staffing levels during our audit period.

## **RECOMMENDATION**

We recommend that OBD continue to improve its monitoring of federal-aid contractors' compliance with OJT Program requirements for fulfilling OJT trainee assignments.

**AGENCY  
PRELIMINARY  
RESPONSE**

MDOT provided us with the following response:

*MDOT agrees with the recommendation.*

*MDOT has dedicated resources to work on the OJT Program and will create a risk-based prioritization process. Specifically, a staff person has been designated to work primarily on the OJT Program and applicable procedures are being developed. As an example, MDOT now follows up with contractors on all missing reports and documents the results of the follow-up. Also, all contractors who were noncompliant with the OJT Program have been designated as noncompliant in 2015. In addition, monthly reports have been obtained from all contractors for 2015 and are on file. Below is a summary of participating contractors and assigned trainee positions for calendar years 2013 through 2015:*

<u>Calendar year</u>	<u>Number of participating contractors that satisfied their assigned trainee positions</u>	<u>Number of assigned trainee positions that were placed*</u>
2013	48 of 55 (87%)	125 of 124 (101%)
2014	43 of 59 (73%)	162 of 138 (117%)
2015	58 of 64 (91%)	188 of 159 (118%)

\* Some contractors voluntarily placed more trainees than they were allocated, which is permissible by regulation and encouraged by MDOT.

## **FINDING #5**

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### **Improvement needed in contractors' monthly OJT reporting and OBD's annual reporting to FHWA.**

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OBD needs to improve its monitoring of federal-aid contractors' compliance with OJT Program requirements for monthly reporting and improve its process for calculating the number of OJT trainees that it annually reports to FHWA as participating in the OJT Program.

FHWA requires MDOT to ensure that federal-aid contractors provide periodic reports documenting their OJT efforts. In addition, FHWA requires MDOT to submit an annual report documenting the activities and accomplishments of its OJT Program, including the total number of trainees participating in MDOT's OJT Program.

We randomly sampled and reviewed monthly OJT Program reports for 7 contractors that were required to have one or more OJT trainees from October 2012 through June 2015. In addition, we compared the number of OJT trainees that each federal-aid construction contractor reported to OBD to the number of trainees that OBD calculated for the contractor and included in the total it reported to FHWA for calendar years 2013 and 2014. We noted:

- a. OBD did not ensure that contractors always provided monthly reports:
  - (1) One (14%) contractor did not submit any monthly reports to OBD during the 33-month audit period. This contractor also did not submit an annual plan for fulfilling its assigned OJT positions for 2014 and 2015 or request a waiver. OBD issued a noncompliance letter to the contractor in 2015.
  - (2) Three (43%) contractors did not submit one or more monthly reports during the audit period for 13 (37%) of 35 OJT trainees.

MDOT's OJT Program procedures require federal-aid contractors to submit to OBD a monthly report for each trainee that documents the dates and number of hours worked for each job skill the trainee performed.

- b. OBD did not ensure that contractors always obtained the trainee's signature on monthly reports.

Three contractors (43%) submitted a total of 28 (12%) monthly reports without the trainees' signatures. There were unsigned reports for 13 (37%) of 35 trainees.

MDOT's OJT Program procedures require that each OJT trainee sign the monthly report to verify that the trainee is aware of and in agreement with the information reported to OBD.

- c. OBD did not ensure that its database contained all of the hours that contractors reported for OJT trainees.

Three (9%) of the 35 sampled OJT trainees and 2 other OJT trainees had hours of work reported that OBD did not record in its database. We identified the 2 additional trainees while performing other auditing procedures.

OBD records the number of hours that contractors report that trainees worked in its database to help monitor OJT trainees' progression toward journey-level status. Employees who have reached journey-level status are not eligible to be employed as an OJT trainee.

- d. OBD did not always correctly calculate the total number of OJT Program participants for its annual report to FHWA because OBD did not consistently consider OJT trainees that became inactive during the year.

- (1) For calendar year 2013, OBD miscalculated the number of OJT trainees for 12 (22%) of the 55 contractors. OBD's calculation of OJT trainees for these 12 contractors differed by 17 (13%) from the number of contractors reported to OBD.

- (2) For calendar year 2014, OBD miscalculated the number of OJT trainees for 25 (42%) of the 59 contractors. OBD's calculation of trainees for these 25 contractors differed by 34 (20%) from the number of contractors reported to OBD.

OBD both undercounted and overcounted the number of trainees for individual contractors during these years. As a result, the net number of trainees that OBD reported to FHWA for calendar years 2013 and 2014 was misstated by 5% and 8%, respectively. However, the pervasiveness of OBD's miscalculations by contractor indicates a risk that OBD's future reports to FHWA of total trainees could be significantly misstated.

## **RECOMMENDATION**

We recommend that OBD improve its monitoring of federal-aid contractors' compliance with OJT Program requirements for monthly reporting and improve its process for calculating the number of OJT trainees that OBD annually reports to FHWA as participating in the OJT Program.

## **AGENCY PRELIMINARY RESPONSE**

MDOT provided us with the following response:

*MDOT agrees with the recommendation.*

*MDOT has dedicated resources to effectively operate the OJT Program and will create a risk-based prioritization process. Specifically, MDOT is updating applicable procedures and has*

*designated a staff person to work primarily on the OJT Program. These internal procedures will help ensure that data is consistently entered into MDOT's OJT database.*

*Additionally, MDOT has continued its efforts to improve its OJT database to help ensure that fields correctly calculate the data entries from forms that are submitted by contractors.*

## COMPLIANCE WITH EEO REGULATIONS

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### BACKGROUND

FHWA has the responsibility to ensure that federal-aid contractors meet equal opportunity requirements and to provide guidance and direction to states in the development and implementation of a program to ensure compliance with equal opportunity requirements. MDOT has the responsibility to ensure compliance by contractors with the requirements of federal-aid construction contracts, including equal opportunity requirements, and to assist in and cooperate with FHWA programs to ensure equal opportunity.

OBD is responsible for completing equal employment opportunity (EEO) contract compliance reviews on an annual basis for a sample of MDOT federal-aid contractors and subcontractors to ensure that federal-aid contractors, subcontractors, vendors, and material suppliers do not discriminate in employment and contracting practices based on race, color, religion, sex, national origin, age, or disability.

During 2014, OBD completed EEO reviews for 13 (8%) of 157 prime contractors for MDOT federal-aid construction projects.

### AUDIT OBJECTIVE

To assess the effectiveness of OBD's efforts to ensure that contractors are in compliance with EEO regulations.

### CONCLUSION

Effective.

### FACTORS IMPACTING CONCLUSION

- OBD completed 100% of its planned EEO reviews for calendar year 2014.
- OBD ensured that the one contractor it reviewed and determined to be in noncompliance with EEO regulations during the audit period implemented a corrective action plan.
- OBD selected and performed EEO field visits for 3% and 8% of all MDOT federal-aid contractors for calendar years 2013 and 2014, respectively.
- OBD selects contractors for EEO reviews using guidance provided by Title 23, Part 230, section 409(b) of the *Code of Federal Regulations* and provides a listing of the selected contractors to FHWA.
- The Michigan FHWA Civil Rights Manager informed us that OBD's EEO review checklist is considered a best practice and is used by several other states.



- OBD provided annual External Equal Opportunity Contract Compliance Review Accomplishment reports to FHWA for 2013 and 2014. The reports contained OBD's EEO review goal, the number of field visits completed, the reason(s) for any field visits not completed, the number of contract sanctions, and the number of complaints for the year.
- In 2015, OBD began submitting its completed EEO review reports to the Michigan FHWA Civil Rights Manager for a concurring review. The Manager concurred with OBD's determination for all 5 reports submitted and reviewed as of October 2015.

## **AGENCY DESCRIPTION**

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MDOT's OBD is responsible for:

- Certification and oversight of DBE eligible firms.
- Implementation and oversight of MDOT's OJT Program.
- Completion of EEO contract compliance reviews for MDOT federal-aid construction contractors.

OBD had 17 full-time employees as of June 30, 2015, and its expenditures totaled \$3.6 million for the fiscal year ended September 30, 2014.

## AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

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### AUDIT SCOPE

To examine the program and other records related to MDOT's OBD. 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.

### PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2012 through June 30, 2015.

### METHODOLOGY

We conducted a preliminary survey to gain an understanding of OBD's operations and activities to establish our audit objectives and methodology. As part of our preliminary survey, we:

- Interviewed OBD staff and analyzed applicable information to obtain an understanding of OBD's organizational structure, operations, responsibilities, and activities.
- Reviewed selected MDOT policies and procedures and federal laws.
- Examined selected DBE, OJT, and EEO program records.
- Reviewed OJT and EEO reports that OBD submitted to FHWA during the audit period.

### OBJECTIVE #1

To assess the sufficiency of OBD's efforts to ensure compliance with DBE Program certification requirements.

To accomplish this objective, we:

- Randomly sampled and reviewed 19 of 151 completed DBE application files to determine if OBD:
  - Obtained the documentation necessary to determine compliance with eligibility requirements for initial DBE certification.

\* See glossary at end of report for definition.

- Made its DBE certification determination within the required time frames.
- Identified the 28 DBE applications submitted to OBD for which a certification determination was not completed as of June 30, 2015 and analyzed the files to determine the length of time that OBD's DBE certification was outstanding for these applications.
- Reviewed OBD's process for monitoring contractors' submission of required annual affidavits.
- Randomly sampled and reviewed 20 of 189 approved annual affidavit files to determine if:
  - OBD obtained the documentation necessary to determine compliance with eligibility requirements for continued DBE certification.
  - Certified DBE firms submitted all required annual affidavits and submitted them on a timely basis.
- Reviewed MDOT's process for monitoring DBE's compliance with CUF requirements and analyzed OBD's tracking records for 769 MDOT construction projects required to have a CUF review during the audit period.

**OBJECTIVE #2**

To assess the sufficiency of OBD's efforts to ensure compliance with OJT Program requirements.

To accomplish this objective, we:

- Reviewed OBD's process for monitoring contractors' compliance with fulfillment of OJT trainee assignments and monthly reporting.
- Randomly sampled and reviewed 7 of 64 federal-aid contractors allocated one or more OJT trainees during our audit period to determine if:
  - Contractors consistently submitted OJT Program annual plans and OBD approved the plans.
  - Contractors consistently submitted required monthly hours reports for all OJT trainees.
  - Contractors' monthly hours reports included the OJT trainees' signatures and detail of the work the OJT trainees performed.
  - OBD correctly entered the OJT trainees' hours of work that the contractors reported into the OJT database to track the progression of the OJT trainees.

- Identified and reviewed 8 OJT trainees with a 0% complete status to determine the accuracy of the status.
- Reviewed OBD's OJT assignment reports for calendar years 2013, 2014, and 2015 to determine if contractors consistently fulfilled their OJT trainee assignments and if OBD notified contractors of potential noncompliance when they did not fulfill their OJT assignments.
- Reviewed OBD's calculations for the number of trainees that OBD reported to FHWA as participating in the OJT Program for calendar years 2013 and 2014 to determine the accuracy of the reported numbers.

### **OBJECTIVE #3**

To assess the effectiveness of OBD's efforts to ensure that contractors are in compliance with EEO regulations.

To accomplish this objective, we:

- Reviewed OBD's annual External Equal Opportunity Contract Compliance Review Accomplishment reports submitted by OBD to FHWA for calendar years 2013 and 2014 to determine OBD's contractor selection criteria, review goals, and accomplishments.
- Reviewed the one contractor determined by OBD's EEO review to be in noncompliance with EEO regulations to determine if the contractor submitted and implemented a required corrective action plan.
- Interviewed the Michigan FHWA Civil Rights Program Manager to obtain an understanding of her oversight of MDOT's EEO program.

### **CONCLUSIONS**

We base our conclusions on our audit efforts and the resulting material conditions and reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

### **AGENCY RESPONSES**

Our audit report contains 5 findings and 5 corresponding recommendations. MDOT's preliminary response indicates that it agrees with all of the recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII,

Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

**PRIOR AUDIT FOLLOW-UP**

Below is the status of the reported findings from our December 2002 performance audit of the Offices of Quality and Reengineering, Human Resources, and Equal Opportunity, Michigan Department of Transportation (59-225-01):

Prior Audit Finding Number	Topic Area	Current Status	Current Finding Number
1	Conflict-of-Interest Disclosures	Not in scope of this audit.	
2	Grievances	Not in scope of this audit.	
3	Americans with Disabilities Act (ADA) Accommodation Requests	Not in scope of this audit.	
4	Leaves of Absence	Not in scope of this audit.	
5	Limited-Term Appointments	Not in scope of this audit.	
6	Student Assistants	Not in scope of this audit.	
7	Commercially Useful Function (CUF) Regulations	Rewritten	3
8	DBE Certification	Rewritten	2
9	Title VI Compliance	Not in scope of this audit.	
10	EEO Contract Compliance Program	Complied	Not applicable

## **GLOSSARY OF ABBREVIATIONS AND TERMS**

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CUF	commercially useful function.
disadvantaged business enterprise (DBE)	A for-profit small business concern: (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
Disadvantaged Business Enterprise (DBE) Program	A federally required program designed to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient through participation in federally funded MDOT contracts.
EEO	equal employment opportunity.
effectiveness	Success in achieving mission and goals.
FHWA	Federal Highway Administration.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
MDOT	Michigan Department of Transportation.
OBD	Office of Business Development.
On-the-Job Training (OJT) Program	A program created by FHWA and MDOT with the primary purpose of offering equal opportunity for the training and upgrading of minorities, women, and disadvantaged persons toward journey-level status in the highway construction trades.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and

operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

**prequalified** The status required of a construction contractor in the specified work class identified on the project advertisement in order to bid as a prime or subcontractor of MDOT.

**reportable condition** A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.

**USDOT** United States Department of Transportation.









