## DISADVANTAGED BUSINESS ENTERPRISE FOR RAILROAD PIEDMONT IMPROVEMENT PLAN (PIP):

|  |  |  |
| --- | --- | --- |
| (12-18-12) (Rev. 5-21-13) | 102-15(J) | SP1 G64 |

**Description**

The purpose of this Special Provision is to promote the solicitation and use of disadvantaged minority and woman-owned businesses in the rail PIP projects let by the Department of Transportation.

**Definitions**

*Aspirational Goal -* The portion of the total contract, expressed as a percentage, that is foreseeable to be performed by DBE subcontractors.

*Disadvantaged Business Enterprise (DBE) -* A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

*Pledged DBE Subcontractor -* Any DBE submitted at the time of bid that is being used to meet the DBE aspirational goal.

*Pledged DBE Goal* *-* The DBE participation at time of award, as determined by the amount of pledged DBE participation submitted.

*Confirmation Letter* *-* Written documentation from the Department to the bidder confirming the Contractor’s approved, pledged DBE participation along with the listing of the DBE firms.

*Manufacturer* *-* A firm that operates or maintains a factory or establishment that produces on the premises, the materials or supplies obtained by the Contractor.

*Regular Dealer -* A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are brought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

*North Carolina Unified Certification Program (NCUCP) -* A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state.

**Forms and Websites Referenced in this Provision**

*Affidavit A - Listing of Good Faith Efforts* -Form signed by bidder listing good faith efforts performed. This form is required if the lowest responsive and responsible bidder fails to meet or exceed the aspirational goal.

http://files.www.piedmontrail.biz/primary-navigation/prequalification-requirements/
PIP\_DBE\_provision.pdf

*DBE Payment Tracking System* - On-line system in which the Contractor enters the payments made to DBE subcontractors who have performed work on the project. <https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

DBE-IS *Subcontractor Payment Information* -Form for reporting the payments made to all DBE firms working on the project. This form is for paper bid projects only. <http://www.ncdot.org/doh/forms/files/DBE-IS.xls>

RF-1 *DBE Replacement Request Form* -Form for replacing a committed DBE.

http://connect.ncdot.gov/projects/construction/Construction%20Forms/DBE%20MBE%20WBE%20Replacement%20Request%20Form.pdf

SAF *Subcontract Approval Form* - Form required for approval to sublet the contract. http://connect.ncdot.gov/projects/construction/Construction%20Forms/Subcontract%20Approval%20Form%20Rev.%202012.zip

JC-1 *Joint Check* *Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties providing full and prompt disclosure of the expected use of joint checks.

http://connect.ncdot.gov/projects/construction/Construction%20Forms/Joint%20Check%20Notification%20Form.pdf

*Letter of Intent* - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed at the time of bid.

http://connect.ncdot.gov/letting/LetCentral/Letter%20of%20Intent%20to%20Perform%20as%20a%20Subcontractor.pdf

*Listing of DBE Subcontractors Form -* Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.

http://connect.ncdot.gov/municipalities/Bid%20Proposals%20for%20LGA%20Content/08%20DBE%20Subcontractors%20(Federal).docx

**Aspirational DBE Goal**

In line with the federal aspirational goal, the following DBE aspirational goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **10.0** %

Even though the goal is aspirational, the expectation is that the Contractor shall exercise all reasonable steps to achieve the goal. Such steps include, but are not limited to:

(A) Clearly defining and disseminating information to DBEs on portions of the work that is available on the project so DBEs are provided an equitable opportunity to participate on the PIP contracts let by the Department.

(B) Solicit through reasonable and available means to try and achieve the aspirational goal.

(C) Providing adequate information and arranging a location for the review of plans, specifications and requirements of the contract.

(D) Providing assistance to DBEs in overcoming barriers such as the inability to obtain bonding, lines of credit, insurance, materials, equipment or related assistance or services.

**Directory of Transportation Firms (Directory)**

Real-time information is available about firms doing business with the Department and firms that are DBE certified through the NC UCP in the NCDOT Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the aspirational DBE goal of the project. The Directory can be found at the following link:

https:// www.ebs.nc.gov/VendorDirectory/default.html

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm’s capability to perform the work.

**Listing of DBE Subcontractors**

At the time of bid, bidders shall submit all the DBE participation that they anticipate to use during the life of the contract. Since the Rail DBE program is race and gender-neutral, all participation up to and over the 10% aspirational goal will be used toward the Department’s race and gender-neutral goal for rail projects. Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder’s submittal of DBE participation. The bidder shall indicate the following required information:

(A) Electronic Bids

Bidders shall submit a listing of DBE participation in the appropriate section of Expedite, the bidding software of Bid Express®.

(1) Submit the names and addresses of DBE firms identified to participate in the contract. If the bidder uses the updated listing of DBE firms shown in Expedite, the bidder may use the dropdown menu to access the name and address of the DBE firm.

(2) Submit the contract line numbers of work to be performed by each DBE firm. When no figures or firms are entered, the bidder will be considered to have no DBE participation.

(3) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE's participation will not count towards achieving the aspirational DBE goal.

(B) Paper Bids

(1) Bidders, at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on the Listing of DBE Subcontractors form.

(2) The bidder shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that DBE’s participation will not count towards achieving the aspirational DBE goal.

**DBE Prime Contractor**

When a certified DBE firm bids on a rail PIP contract that contains an aspirational DBE goal, the DBE firm by virtue of the work it performs on the contract with its own forces, will meet the DBE aspirational goal. The DBE bidder shall list itself along with any other DBE subcontractors on the Listing of DBE Subcontractor form and the amount of work by each.

**Written Documentation – Letter of Intent**

The bidder shall submit written documentation for each DBE that will be used on the project to meet the aspirational goal of the contract, indicating the bidder’s intent to use the DBE in the contract. This documentation shall be submitted on the Department’s form titled *Letter of Intent*. The purpose of this documentation is to make the DBE aware that their quote is being used on the project. The documentation is not intended to take the place of a formal contract between the Contractor and the DBE subcontractor.

A hard or electronic copy of the Letter(s) of Intent shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

**Submission of Good Faith Effort**

While the lowest responsible and responsive bidder will not be denied award of the contract based on failing to meet the advertised aspirational goal, the Department expects that the bidder will put forth a good faith effort to meet it. If the bidder fails to meet or exceed the aspirational DBE goal, the apparent lowest responsive bidder shall submit Affidavit A - Listing of Good Faith Efforts. A hard or electronic copy of the Affidavit shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than 12:00 noon of the sixth calendar day following opening of bids, unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

**Counting DBE Participation Toward Meeting the DBE Aspirational Goal**

(A) Participation

The total dollar value of the participation by a submitted DBE will be counted toward the aspirational goal of the contract. The total dollar value of the participation by a DBE will be based upon the value of work actually performed by the DBE and the actual payments to the DBE firms by the Contractor.

(B) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of the Form JC-1 *(Joint Check Notification Form)* and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the aspirational goal. Work that a DBE subcontracts to
a non-DBE firm does not count toward the aspirational goal of the contract.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the Contractor may count toward its aspirational goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its own forces.

(E) Suppliers

A contractor may count toward its aspirational DBE goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.

(F) Other

A contractor may count toward its aspirational DBE goal the following expenditures to DBE firms that are not manufacturers or regular dealers:

(1) The fees or commissions charged by a DBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of
a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.

(2) With respect to materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**Commercially Useful Function**

Even though the goal on the rail PIP project is aspirational, there is still a requirement that the DBEs performing on the project will perform a commercially useful function in the work of a contract. The Contractor may only count/report towards the aspirational goal only expenditures to DBEs that perform a commercially useful function.

(A) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function:

(1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting the aspirational DBE goal.

(2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may subcontract the work to another DBE firm, including
an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.

(5) The DBE may also subcontract the work to a non-DBE firm, including from an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the
non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by
non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the Contractor will not count towards the DBE credit for the project.

(6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE’s credit as long as the driver is under the DBE’s payroll.

(7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

**Changes in the Work** **and Replacement of Pledged DBEs**

Throughout the contract there may be changes made by the Engineer or Contractor that result in the reduction or elimination of work that was proposed to be performed by a DBE. Since the goals are aspirational, the Contractor will not be required to seek additional participation elsewhere on the project, but there is an expectation that there will be a continued effort to get DBEs on the job.

If the Engineer or Contractor makes changes that result in additional work to be performed by a DBE based on the Contractor’s pledged DBE submittal, the Department has an expectation that the DBE shall participated in the additional work to the same extent as the DBE participated in the original work unless there is a viable reason.

If a DBE cannot perform the work for any reason, there is not a requirement to replace the DBE with another, but there is an expectation by the Department that the Contractor will continue to seek additional DBE participation opportunities on the project. The Department also requires the use of the *DBE Replacement Request Form* (RF-1) for tracking purposes.

**Reporting Disadvantaged Business Enterprise Participation**

The Contractor shall provide the Engineer with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second tier subcontractor). This accounting shall be furnished to the Engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

(A) Withholding of money due in the next partial pay estimate; or

(B) Removal of an approved contractor from the prequalified bidders’ list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor’s responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies from being approved for work on future DOT projects until the required information is submitted.

Contractors reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Engineer can request written verification of subcontractor payments.

(A) Electronic Bids Reporting

The Contractor shall report the accounting of payments through the Department’s DBE Payment Tracking System.

(B) Paper Bids Reporting

The Contractor shall report the accounting of payments on the Department’s
DBE-IS *(Subcontractor Payment Information)* with each invoice. Invoices will not be processed for payment until the DBE-IS is received.