



**Regional Transit Authority  
Of Southeast Michigan**

**Disadvantaged Business  
Enterprise (DBE)  
Procurement and  
Contract Requirements**

OCTOBER 2024

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# APPENDICES

## APPENDIX A – RTA DBE PROCUREMENT FORMS

DBE FORM F - Prime Affidavit/DBE Utilization/DBE Commitment

DBE FORM F-1 - DBE Prime Affidavit/DBE Utilization/DBE Prime Commitment

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# Part A.

## Specified Federal Requirements

### RTA'S OBLIGATIONS:

#### Non-Discrimination Requirements (49 CFR Part 26.7)

Per Disadvantaged Business Enterprise (“DBE”) Regulations as defined under 49 CFR Part 26.7, the Regional Transit Authority of Southeast Michigan (“RTA”) will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, RTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

#### DBE CONTRACT ASSURANCE (49 CFR PART 26.13(A))

Per DBE Regulations as defined under 49 CFR Part 26.13(a), RTA will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any United States Department of Transportation (“USDOT”)-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. RTA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.

#### Contractor's Responsibilities:

Contractor shall ensure that the nondiscrimination clause(s) and contract assurances found in Part A under sections A.1 and A.2 of this document as well as the flow-down provisions found in Part F of this document are incorporated in all DBE subcontract Agreements regardless of the tier. Contractor shall also ensure that the nondiscrimination clause(s) and contract assurances found in Part A under the sections A.1 and A.2 of this document as well as the prompt payment provisions found in Part F of this document are incorporated in all non-DBE subcontract Agreements regardless of the tier. The Contractor shall perform its requirements and shall require each DBE Subcontractor regardless of the tier to perform its respective obligations

under this Contract and the Subcontract(s) in accordance with the following requirements.

## **A.1 NON-DISCRIMINATION CLAUSE**

During the Performance of this Contract, the Contractor or Subcontractor:

1. Will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. The Contractor will ensure that equal employment opportunity is afforded to all applicants in recruitment and employment, and that employees are treated fairly, during employment, without regard to their race, color, religion, national origin, sex, disability, or age. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to setting forth provisions of this nondiscrimination clause.
2. Will in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, disability, or age. The Contractor agrees to comply with any regulations promulgated by the Equal Employment Opportunity Commission (“EEOC”), Department of Labor (“DOL”), Office of Federal Contract Compliance Programs (“OFCCP”), Department of Justice (“DOJ”), the State of Michigan’s applicable Revised Statutes and all other relevant state and local laws.

## **A.2 CONTRACT ASSURANCE (49 CFR PART 26.13(B))**

Per DBE Regulations as defined under 49 CFR Part 26.13(b), the following Contract Assurance clause must be used verbatim by all RTA’s Contractor, Subrecipient, or Subcontractor at every tier on all USDOT-assisted contracts:

The Contractor, Subrecipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the

termination of this contract or such other remedy as the RTA deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.



## Part B. Overview of RTA's DBE Program Policy

RTA has established a DBE Program in accordance with the "USDOT" DBE regulations as defined under 49 CFR Part 26. As a condition for receiving Federal financial assistance, RTA signed assurances that it will comply with the DBE regulations. It is a requirement of the USDOT and the policy of RTA that DBEs be afforded the opportunity to participate in the performance of contracts financed in whole or in part with federal funds from USDOT. Consequently, the DBE requirements of Part 26 apply to this solicitation/contract. It is RTA's intention to create a level playing field on which DBEs can compete fairly for federally funded contracts, to ensure that this DBE Procurement and Contract Requirements is narrowly tailored in accordance with applicable law and regulations; to ensure that only firms that meet the eligibility standards are permitted to participate as DBEs on this contract; and to help remove barriers to participation of DBEs in RTA's contracts and all subcontracts at every tier.

Consistent with RTA's DBE policy, it is the responsibility of all Contractors and Subcontractors who directly or indirectly work on RTA's USDOT funded contracts to ensure full and fair opportunities to DBEs and fully comply with this DBE Procurement and Contract Requirements.

# Part C.

## DBE Goals and Good Faith Efforts Requirements

### PROCUREMENT/SOLICITATION REQUIREMENTS:

The requirements of 49 CFR Part 26, Regulations of the USDOT, apply to this solicitation/contract. It is the policy of RTA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid/proposal specification/solicitation. These requirements apply to all Bidder/Proposers, including those who qualify as a DBE. A DBE contract goal of [X] percent ([X])% has been established for this contract. The Bidder/Proposer shall make good faith efforts, as defined in Appendix A, under 49 CFR Part 26, to meet the DBE participation goal in the performance of this contract.

For Request for Proposals (RFP) and any best value procurement methods, the contract will be awarded to the responsive proposer or proposers who best meet the Evaluation Criteria, cost and other factors considered. In low bid procurements, the bid will be awarded to the lowest responsive bidder. The specified DBE participation goal applies to all post selection negotiations. Proposer's/Bidder's commitment to the percentage of certified DBE utilization during the term of this contract must be stated in the Prime Affidavit/ DBE Prime Affidavit (DBE Form F/DBE Form F-1). A bidder/proposer who fails or refuses to complete and return all required DBE Forms included in this solicitation will be deemed non-responsive. All post award extensions, amendments, change orders and options of the contract are subject to review by RTA. RTA may determine that a modification may impact successful Contractor's ability to comply with its initial DBE commitment. RTA will evaluate all post award decisions to self- perform scopes of work where DBE availability was present, yet not solicited, not utilized, or disregarded.

**Please Note:**

Sections C.1 and C.2 Requirements: Applies to all Design-Bid-Build solicitations, professional services solicitations and any other types of services Procurements/Solicitations.

Sections C.4 Requirements: Applies to all Design-Build/ Progressive Design-Build/ Turnkey/ CMGC or any other Alternative Method Procurements/Solicitations.

Sections C.5 Requirements: Applies to all Task Order or On-Call Procurements/Solicitations.

To be deemed a responsive Bidder/Proposer and comply with the DBE requirements of 49 CFR Part 26.51, initially, the Bidders/Proposers will be required to make good faith efforts to meet or exceed the specified project DBE participation goal or provide documentation of good faith efforts at the time of the bid/proposal submission. If the Bidders/Proposers commit to making a good faith efforts to meet or exceed the DBE goal identified on this project, they will follow the instructions below in sections C.1. If the Bidders/Proposers are Not Able to meet or exceed the DBE goal, they will follow the good faith efforts instructions as stated in section C.2 of this this DBE Procurement and Contract Requirements. For all Alternative Delivery Procurements, please refer to section C.4 of this document.

## **C.1 INITIAL SOLICITATION GOOD FAITH EFFORTS REQUIREMENTS – WHEN BIDDERS/ PROPOSERS MEET AND/OR EXCEED THE DBE GOAL**

The bidder/proposer can meet the DBE participation goal assigned to this contract by demonstrating and documenting their commitments for participation by DBEs for at least the total percentage of the DBE goal assigned to this contract, or a percentage that exceeds the goal for the project. The Bidder/Proposer must indicate/demonstrate their DBE Utilization/DBE Commitment on the Prime Affidavit/DBE Prime Affidavit (DBE Form F/DBE Form F-1).

RTA requires all bidders/proposers to submit the following information to RTA, under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures:

- a- The names and addresses of each DBE firm that will participate in this contract; (this information will be required in DBE Form G – DBE Schedule of Participation and DBE Form H - DBE Letter of Intent). Please also attach/include a copy of each DBE firm’s current certification letter/s or certificate(s) issued by the State of Michigan Unified Certification Program (“MUCP”).
- b- Description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract; (this information will be required in DBE Form G – DBE Schedule of Participation and DBE Form H - DBE Letter of Intent).
- c- The dollar amount of each DBE firm included/listed in the solicitation; (this information will be required in DBE Form G – DBE Schedule of Participation and DBE Form H - DBE Letter of Intent).
- d- Written documentation of the bidder’s/proposer’s commitment to use a DBE Subcontractor whose participation it submits to meet a contract goal; (this information will be required in DBE Form F/F-1 – Prime Affidavit/DBE Prime Affidavit as well as DBE Form H - DBE Letter of Intent).

- e- Written confirmation from each DBE firm listed on the solicitation indicating that it is participating in the contract in the kind and amount of work provided in the bidder's/proposer's commitment. (this information will be required in DBE Form H - DBE Letter of Intent).

## **C.2 INITIAL SOLICITATION GOOD FAITH EFFORTS REQUIREMENTS – WHEN BIDDERS/ PROPOSERS DO NOT MEET THE DBE GOALS**

If the bidder/proposer does not meet the DBE goal or is able to only meet part of the DBE goal established for this contract, the bidder/proposer must document adequate good faith efforts in order to be deemed a responsive Bidder/Proposer. Appendix A to 49 CFR part 26 clearly states, “this means that the Bidder/Proposer must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.”

The following is a list of efforts that Bidders/Proposers must submit as proof of good faith efforts. Please note that these efforts are considered demonstrative of “good faith” efforts within the DBE regulations, however, they do not constitute an exhausted list. Bidders/Proposers will be expected to complete and submit with their bid/proposal the DBE Good Faith Efforts - DBE Form I, to document all their efforts as well as include and/or attach any additional information and efforts as deemed appropriate and or applicable. The following is a list of efforts that are considered demonstrative of “good faith” efforts within the DBE regulations:

1. Whether the Bidders/Proposers solicited through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Bidders/Proposers must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Bidders/Proposers must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

2. Whether the Bidders/Proposers selected portions of the work to be performed by DBEs to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
3. Whether the Bidders/Proposers provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to the solicitation.
4. Whether the Bidders/Proposers negotiated in good faith with interested DBEs. It is the Bidders'/Proposers' responsibility to make a portion of the work available to DBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE Subcontractors and suppliers, so as to facilitate DBE participation. The fact that Bidders/Proposers may be able to perform 100% of the work with their own workforce is not sufficient justification to fail to negotiate with DBEs or not to meet the DBE participation goal assigned to this project.
5. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
6. Whether the Bidders/Proposers made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by RTA or Bidders/Proposers.
7. Whether the Bidders/Proposers made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Whether the Bidders/Proposers effectively used the services of available minority/women community organizations, Contractors' groups, and other organizations to provide assistance in the recruitment and placement of DBEs.

9. Bidders/Proposers are required to submit copies of each DBE and non-DBE Subcontractor quotes submitted to them when a non-DBE Subcontractor was selected over a DBE for work on the contract so the RTA can review whether DBE prices were substantially higher; and contact the DBEs listed on a Bidder's/Proposer's solicitation to inquire as to whether they were contacted by the Prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts. A Bidder/Proposer will not be deemed to demonstrate good faith if it rejects a DBE simply because it is not the low bidder, or if it is unable to find a replacement DBE at the original price. It is important to note that a complete good faith efforts procedure is described under 49 C.F.R. §26.53 for further guidance and review.

All good faith efforts information must be complete and accurate and adequately documented by the Bidders/Proposers and shall be submitted with the bid/proposal.

To award a contract to a Bidder/Proposer that has failed to meet the DBE goal, RTA will review the good faith efforts submission and decide whether the Bidder/Proposer made a "good faith effort" to actively, effectively, and aggressively seek DBEs to meet the DBE goal prior to proposal submission. The Bidder/Proposer is also responsible for collecting good faith efforts documentation of all major non-DBE Subcontractors/suppliers as part of their responsibility to implement the DBE Program. If, after reviewing the "good faith efforts" documentation submitted by the Bidder/Proposer, RTA determines that good faith efforts were met, the contract will be recommended for award to the responsive Bidder/Proposer.

If RTA determines that the successful Bidder/Proposer has failed to meet the DBE goal or make adequate/sufficient good faith efforts, before awarding the contract, RTA will provide the Bidder/Proposer an opportunity for administrative reconsideration.

### **C.3 ADMINISTRATIVE RECONSIDERATION**

Within fourteen (14) days of being informed by RTA that it is not responsive because it has not documented sufficient good faith efforts, a Bidder/Proposer may request administrative reconsideration. Bidders/Proposers should make this request in writing to the following reconsideration official:

RTA's Executive Director (ED)  
Regional transportation Authority  
1001 Woodward Avenue, Detroit, MI 48226

(313) 402-1020

The CEO is the Reconsideration Officer for RTA. If the CEO played any role in the original determination that the Bidder did not document sufficient good faith efforts, the reconsideration officer for that procurement shall be the Chairman of the Executive and Policy Committee, Mr. David Massaron.

The Reconsideration Official, or their designee, will not have played any role in the original determination that the Bidder/Proposer did not document sufficient good faith efforts per 49 CFR Part 26. If the reconsideration official above is changed, the Bidder/Proposer will be notified in advance by an appropriate RTA staff member.

As part of this reconsideration, the Bidder/Proposer will have the opportunity to provide written documentation or argument concerning the issue of whether it met the contract goal through participation, good faith efforts, or both. Any written documentation or argument must explain the good faith efforts made by the Bidder/Proposer at the time of submission and evidence of efforts made subsequent to submission will not be considered. Upon request, the Bidder/Proposer will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it made good faith efforts to meet the contract goal. Upon reaching a determination, the reconsideration official will send the Bidder/Proposer a written determination on reconsideration, explaining the basis for finding that the Bidder/Proposer did or did not exercise good faith efforts to meet the contract goal. This determination shall be final, and the reconsideration process is not administratively appealable to the Department of Transportation (“DOT”).

#### **C.4 DBE REQUIREMENTS/PROVISIONS FOR DESIGN-BUILD/ PROGRESSIVE DESIGN-BUILD/ TURNKEY/ CMGC OR ANY OTHER ALTERNATIVE METHOD SOLICITATION:**

If this project is an Alternative Delivery procurement with a DBE Goal, the proposers must submit a DBE Open-Ended DBE Performance Plan (“OEPP”) with their proposal in order to be deemed responsive. The OEPP replaces the requirement to provide the DBE information that is mandatory with the traditional design-bid-build solicitations, such as the names and addresses of DBEs that will participate in the contract, description of the work that each DBE will perform, dollar amount of the participation of each DBE, etc.



In an alternative delivery method contracting procurement, to be considered responsive, the proposer will be required to submit to RTA at the time of proposal submission an OEPP that includes a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Additionally, the proposer will be required to submit with their proposal a narrative detailing their approach and strategy to their overall DBE utilization and OEPP commitment that is innovative and focused on maximizing opportunities to DBEs. This written narrative should include at a minimum, name of the DBE Manager for the project, outreach strategy, any mentor-protégé relationships, supportive services, etc. It should be noted that the elements of the written narrative listed above are not an exhausted list as creativity, diversity and originality should be part of the approach to the written narrative and the OEPP.

Once the alternative delivery contract is awarded, RTA will perform ongoing monitoring and oversight to evaluate whether the alternative delivery Contractor is using ongoing good faith efforts to comply with their initial OEPP and schedule. RTA may choose, at its sole discretion, to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the alternative delivery Contractor will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the alternative delivery Contractor continues to use good faith efforts to meet the goal and/or honor their initial DBE participation commitment. Table 1 below represents an example of an OEPP that Proposers will be required to submit with their proposal:

**Table 1. Need title**

<b>DBE Plan Work Activities/DBE Contractor</b>	<b>Time Frame</b>	<b>Estimated Dollar Value for DBE Participation</b>	<b>Anticipated DBE%</b>
<b>Surveying</b>	Year 1, Q1	\$7,500	0.38%
<b>Design Support</b>	Year 1, Q1, Q2	\$5,500	0.25%
<b>Traffic Control</b>	Year 1, Q2, Q3	\$20,000	1.00%
<b>Excavation</b>	Year 1, Q1, Q2	\$67,000	3.38%
<b>Erosion Control</b>	Year 1, Q3, Q4	\$100,000	5.00%
<b>Striping</b>	Year 1, Q1, Q2	\$10,000	0.50%
<b>Landscaping</b>	Year 1, Q1, Q2	\$10,000	0.50%
<b>Sum</b>		\$220,000	11.00%

The successful Contractor will be expected to make good faith efforts to engage, include, and add DBEs to the project on an ongoing basis throughout the duration of this contract. Additionally, each time a Contractor adds a new DBE to the contract, within thirty (30) days prior to a DBE start date on the project, the Contractor must submit to RTA, individual DBE Letters of Intent – Form H along with DBE’s certification with MUCP to ensure that the NAICS code/s coincide/s with the scope of work that the DBE is expected to perform on the project. RTA will review the documents and advise the Contractor if the proposed DBE is properly certified to provide the scope of work as listed on the DBE’s Letter of Intent– Form H. Once RTA approves the DBE, the Contractor can then add the DBE on their DBE Schedule of Participation - Form G. The Contractor will be expected to submit to RTA updated DBE Schedule of Participation - Form G, at least quarterly, after the Notice to Proceed is issued.

Please Note: the DBE firms listed on DBE Schedule of Participation - Form G cannot be terminated, substituted nor does RTA allow reduction of work without the final approval of RTA.

The successful Contractor will also be required to submit an annual report to RTA detailing all outreach, any mentor-protégé relationships, supportive services and all good faith efforts made throughout the preceding/past year and their outreach and strategy plan for maximizing opportunities and ensuring compliance with their DBE OEPP commitments in the upcoming year.

The Contractor will be required to document and retain all good faith efforts documentation to DBEs throughout the life of the contract. All documentation evidencing adequate good faith efforts will be required if the Contractor does not fulfill their DBE OEPP commitments. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements.

A Bidder/Proposer who fails to comply with DBE requirements to this DBE Procurement and Contract Requirements will be deemed non-responsive. The specified DBE participation goal on this bid/proposal applies to all post selection negotiations. All post-award extensions, amendments, change orders and options of the contract are subject to review by RTA. RTA may determine that a modification may impact the Contractor’s ability to comply with its DBE utilization and/or OEPP commitments. RTA will evaluate all post-award decisions to self- perform scopes of work where DBE availability was present, yet not solicited, not utilized, or disregarded.

## C.5 REQUIREMENTS/PROVISIONS FOR TASK ORDER OR ON-CALL PROCUREMENTS/ SOLICITATIONS

If this contract is a task order or on-call procurements, to be considered a responsive bidder/proposer, when a DBE goal is specified on this project, a bidder/proposer is required to make good faith efforts to meet the DBE goal identified in the bid solicitation by indicating their DBE utilization/commitment on the DBE Forms F or F-1, as deemed applicable, and list some of the certified DBE firms the Bidder/Proposer expects to perform work on the contract.

The bidder/proposer should only specify the scope of work that the DBE/s will perform in the contract if RTA has determined and confirmed those specific initial tasks will be awarded. Otherwise, if RTA cannot confirm that a particular task will be awarded, then the bidder/proposer should indicate to be determined (“TBD”) under the scope of work that the DBE(s) will perform. The bidder/proposer should never specify dollar values or make commitments to utilize DBEs for a specific contractual amount on a task order or on-call projects, as it is not known at the time of the bid/proposal by RTA which tasks will be awarded and what values will be associated with those tasks. Therefore, the bidder/proposer should indicate TBD under the agreed price to be paid to the DBE(s).

The bidder/proposer is required to submit a *Written Narrative* explaining how they will do outreach and engage DBEs, specific to each individual task, and describe how they intend to fulfill their DBE commitments throughout the life of the task order/on-call contract. The bidder/proposer must explain how they intend to fulfill their DBE requirements and commitments if any tasks are exercised/awarded in the future.

If the Bidder’s/Proposer’s initial DBE commitment stated on DBE utilization/commitment - DBE Forms F or F-1 is less than the DBE goal identified in this solicitation, the Bidder/Proposer is required to make adequate good faith efforts to attain the DBE goal. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements. Additionally, please also refer to Part C, section C.2 of this document for further instructions on good faith efforts.

Please note that all documentation evidencing good faith efforts shall be submitted with the bid/proposal. Bidders/Proposers who do not meet the DBE goal assigned to this solicitation, will be expected to complete and submit with their bid/proposal the *DBE Good Faith Efforts - DBE Form I*, to document all their efforts as well as include

and/or attach any additional information and efforts as deemed appropriate and or applicable.

To award a task order/on-call contract to a Bidder/Proposer that has failed to meet the DBE goal, RTA will review the good faith efforts submission and decide whether the Bidder/Proposer made adequate “good faith effort” to actively, effectively, and aggressively seek DBEs to meet the DBE goal prior to proposal submission. The Bidder/Proposer is also responsible for collecting good faith efforts documentation of all major non-DBE Subcontractors/suppliers as part of their responsibility to implement the DBE Program. If, after reviewing the “good faith efforts” documentation submitted by the Bidder/Proposer, RTA determines that good faith efforts were met, the contract will be recommended for award to the responsive Bidder/Proposer.

If RTA determines that the successful Bidder/Proposer has failed to meet the DBE goal or make adequate/sufficient good faith efforts, before awarding the contract, RTA will provide the Bidder/Proposer an opportunity for administrative reconsideration as detailed in Part C, section C.3 of this document.

After the award of this contract, the successful Contractor is expected to make good faith efforts to engage and utilize DBEs on an ongoing basis if/when any of the tasks are exercised/awarded. The successful Contractor will also be expected to revise and submit updated DBE Forms G and H if DBEs are added to the contract or if additional scopes of work are assigned to the original DBEs on the contract. Each time a Contractor adds a DBE to the contract, RTA must review the DBE’s certification with the MUCP to ensure that the NAICS code(s) coincide(s) with the scope of work that the DBE is expected to perform on the contract. The Contractor is required to make good faith efforts to fulfill their initial commitment to DBE(s) participation/utilization as stated on the DBE Forms F or F-1 throughout the entire contract duration.

The Contractor will be required to document and retain all good faith efforts documentation to DBEs throughout the life of the task order/on call contract. All pre-proposal and post-proposal documentation evidencing adequate good faith efforts will be required if the Contractor does not fulfill their commitment to DBE participation/utilization as stated on the DBE Forms F or F-1. 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26 shall serve as the criteria for evaluating compliance with the good faith efforts requirements.

# Part D.

## Counting DBE Participation

### D.1 COUNTING DBE PARTICIPATION ON FEDERALLY FUNDED CONTRACTS

**Please Note:** *Part D can be used by bidders/proposers during procurement process to understand how DBE participation can count towards the DBE goal/commitment. This section can also be used by successful Contractor post award to properly count DBE participation towards DBE goal/commitment.*

#### Counting DBE Participation on Contracts:

The DBE goal applies to the total value of all work performed under this contract which includes the value of all change orders, amendments, and modifications. The value of this contract, including the value of all change orders, amendments, and modifications will be tracked. To count DBE participation toward the DBE goal established for the contract, the proposed DBE(s) must be certified as a DBE(s) with the MUCP under the appropriate NAICS code(s) that coincides with the scope of work that they will execute on this contract. Additionally, the DBE firm(s) must be certified as a DBE and perform a Commercially Useful Function (“CUF”). DBE certification does not, however, constitute a representation or warranty by RTA as to the qualification of any listed firm. In accordance with 49 CFR Part 26, RTA will count DBE participation in accordance with the following:

1. When a DBE participates in this contract, RTA counts only the value of the work actually performed by the DBE toward DBE goal.
2. RTA will count the entire amount of the contract that is performed by the DBE's own forces. That includes the cost of supplies and materials obtained by the DBE for the work of the contract, any supplies purchased, or equipment leased by the DBE (except supplies and equipment the DBE Subcontractor purchases or leases from the Contractor or its affiliate).
3. RTA will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of this contract, toward DBE goal, if RTA determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

4. If a DBE firm is the successful Prime Contractor on this project, RTA will count DBE work performed by DBE Prime Contractor for self-performance toward meeting the DBE goal, only for the scope of work that the DBE Prime Contractor is certified in as a DBE and at a percentage level the DBE Prime Contractor will be performing themselves with its own forces.
5. Work that is performed by DBEs is deemed to include the cost of materials and supplies purchased and equipment leased by the DBE from non-DBE sources. Work subcontracted can only count if the Subcontractor is another eligible DBE.
6. When a DBE performs as a participant in a joint venture, RTA will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goal.
7. RTA will count expenditures to a DBE Contractor toward the DBE goal only if the DBE is performing a commercially useful function on this contract.
8. 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 must 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, RTA must 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 they are performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
9. Each DBE must perform a Commercially Useful Function to be counted toward the DBE goal and at least thirty (30) percent of the work must be performed by a DBE of the total cost of its contract for the DBE to be presumed to be performing a commercially useful function.

10. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed, in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, RTA will examine similar transactions, particularly those in which DBEs do not participate.
11. When a DBE is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut this presumption. RTA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

## **D.2 COUNTING DBE PARTICIPATION OF DBE TRUCKING FIRMS**

RTA will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goal.
2. The DBE must 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 also lease trucks from non-DBE firms. RTA uses the option that permits limited DBE credit to be obtained for the use of trucks leased from non-DBE sources. This option permits counting of credit for the use of non-DBE trucks not to exceed the value of transportation services on the contract provided by DBE trucks. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
5. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
6. A lease must indicate that the DBE has exclusive use of and control over the truck. This 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. Leased trucks must display the name and identification number of the DBE.

### **D.3 COUNTING DBE PARTICIPATION OF DBE MANUFACTURERS, REGULAR DEALERS, DISTRIBUTORS AND BROKERS**

RTA will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

1. If the materials or supplies are obtained from a **DBE manufacturer**, RTA will count **one hundred (100) percent** of the cost of the materials or supplies toward DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under this contract and of the general character described by the specifications.



2. If the materials or supplies are purchased from a **DBE regular dealer**, RTA will count **sixty (60) percent** of the cost of the materials or supplies toward DBE goal. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the [contract](#) are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
3. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease Agreement and not on an ad hoc or contract-by-contract basis.
4. A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) will also be considered in the same manner as a regular dealer of bulk items as described in the preceding paragraph above. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it will not be considered a regular dealer.

5. If the materials or supplies are purchased from a **DBE distributor** that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, RTA will count **forty (40) percent** of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive forty (40) percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.
6. Manufactures' representatives, brokers, packagers, or other persons who arrange or expedite transactions are not regular dealers and shall be counted in the same manner as brokers; and in utilizing the DBE participation of a Broker, only the bona fide fees and or commissions earned by them for their performance of a commercially useful function will count toward meeting the project goal. The Contractor must separate the bona fide brokerage fees and or commissions from the actual cost of the supplies or materials provided to determine the actual dollar amount of participation that can be counted towards meeting the DBE goal.

Per 49 CFR Part 26.53(c)(1), RTA will use the *DBE Regular Dealer/Distributor Affirmation Form* found under Appendix A of this document to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for sixty (60) or forty (40) percent credit respectively, of the cost of the materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor as defined under 49 CFR Part 26.55(e)(2)(iv)(A),(B),(C) and under this contract. RTA will use one or a combination of the following methods as deemed applicable/necessary to make a preliminary counting determination for each DBE listed as a regular dealer or distributor on this bid/proposal/contract:

- a- Request that the *DBE Regular Dealer/Distributor Affirmation Form* be completed by the DBE firm, signed and dated by both the Bidder/Proposer and the DBE and Submitted with the bid/proposal.
- b- Request that the *DBE Regular Dealer/Distributor Affirmation Form* be completed by the DBE firm, signed and dated by both the Bidder/Proposer and the DBE and Submitted to RTA after the bid/proposal submission, but prior to contract award/execution.
- c- When Primes add DBE regular dealers or distributors after the contract award, request that the *DBE Regular Dealer/Distributor Affirmation Form* be completed by the DBE firm, signed and dated by both the Contractor/Prime and the DBE and Submitted to RTA.

The *DBE Regular Dealer/Distributor Affirmation Form* must be accompanied by the bidder's/proposer's/contractor's DBE commitment, DBE contract or purchase order showing materials the DBE regular dealer or distributor will be supplying. The *DBE Regular Dealer/Distributor Affirmation Form* and all associated required documents is subject to RTA's evaluation and approval. RTA will review and make a preliminary determination based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of commercially useful function will be consistent with the preliminary counting of such participation. RTA may elect, at its sole discretion to perform an on-site visit/virtual site visit and request any additional information deemed applicable and/or necessary to make a determination.

RTA will not count the participation of a DBE Subcontractor toward a Contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. As per 49 CFR Part 26.81(c), to receive DBE credit toward meeting a contract goal in the context of the Prime Contract/Contractor award process, a DBE firm must be certified before the due date for bids or offers on the Prime contract. Notwithstanding, there may be situations after the award of the Prime contract, however, in which it is appropriate to count DBE credit for the use of a DBE Subcontractor certified after the Prime contract is executed. To be eligible to obtain DBE credit, a DBE Subcontractor must be certified before the subcontract on which it is working is executed. This is very typical of turnkey/Alternative Delivery procurements, when the project is multi-year and separated into different segments/phases and the Contractor is making ongoing good faith efforts to bring new DBE Subcontractors on the project. Under these circumstances, it is acceptable to count DBE participation by a firm that was not certified at the time the Prime

contract was executed, however, the DBE Subcontractor was later certified prior to the subcontract on which it is working is executed.

## D.4 FIRM CEASED TO BE CERTIFIED AS A DBE

For purposes of complying with 49 CFR Part 26.87, RTA will follow these provisions:

1. When RTA award(s) a contract to a Contractor and the Contractor has made a commitment to using an ineligible DBE firm, or RTA has made a commitment to using a DBE Prime Contractor, but a subcontract or contract has not been executed before the MUCP issues the decertification notice, the ineligible DBE firm does not count toward the contract DBE goal or RTA's overall goal. RTA will direct the Contractor to meet the contract goal with an eligible DBE firm or demonstrate to RTA that it has made a good faith effort to do so.
2. If a Contractor has executed a subcontract with a DBE firm on a RTA's contract, before the MUCP notifies the DBE firm of its ineligibility, the Contractor may continue to use the DBE firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where RTA has awarded a Prime contract to the DBE that was later ruled ineligible, the portion of the ineligible DBE firm's performance of the contract remaining after the MUCP issued the notice of its ineligibility shall not count toward RTA's overall goal but may count toward the contract goal.
3. **Exception:** If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of RTA's contract, RTA may continue to count its participation on that contract toward RTA's overall goal as well as toward contract goals.

## Part E. Joint Ventures

**Please Note:** Part E can be used by bidders/proposers during procurement process to understand how Joint Ventures with DBE functions. This section can also be used by successful Contractor post award to properly count DBE participation towards DBE goal/commitment under a Joint Venture structure.

For purposes of this document, a Joint Venture is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

RTA will count toward its DBE goal a portion of the total dollar value of this contract with a joint venture equal to the distinct, clearly defined portion of the work of this contract that the DBE performs with its own forces toward the DBE goal(s) and such services/supplies/NAICS codes are approved for DBE participation credit. The Joint Venture Agreement MUST specify the services, dollar value, reporting structure and details of the DBEs' performance requirements associated with the percentage of the joint venture ownership.

# Part F.

## Flow-Down Provisions

### F.1 POST AWARD DBE COMPLIANCE REQUIREMENTS:

While no Subcontractor will be considered a third-party beneficiary to the Contract between RTA and the Contractor, RTA considers all Subcontractors at every tier to be agents of the Contractor. Therefore, every Contractor at every tier will be held to all the requirements of this Contract. With that understanding, the Contractor is well advised to conform all subcontracts to the terms and conditions found in the RTA's contract with the Contractor. The Contractor must include the following provisions in their subcontract Agreements with their DBE Subcontractors as well as ensure that all tiered-Subcontractors comply with and insert the following provisions into their contact agreements with DBE firms: Provisions of Part A: the Non-Discrimination and Contract Assurance Clauses, as well Provisions of Part G which include: Prompt Payment provisions; Joint Check Utilization; DBE Removal/Termination/Substitution/Reduction of Scope provisions, and Changes.

Throughout this contract or after the award of this contract, any time the Contractor makes good faith efforts and engages or subcontracts with additional DBEs, the Contractor must get approval from the RTA if the Contractor intends to count DBE participation from any additional DBEs added to the project. To count DBE participation toward the goal established for this contract or DBE commitments made by the Contractor for DBE utilization, RTA must ensure that any DBEs added to the project during solicitation or post-award, are properly certified as DBE(s) with the MUCP under the appropriate NAICS code that coincides with the scope of work that they will execute on this project/contract. Notwithstanding, RTA shall also request any appropriate documents it deems necessary including subcontract Agreements for review. The Contractor shall ensure that this information flows down to all tier Contractors that intends to subcontract or contract with DBEs.

## F.1 PROMPT PAYMENT OF DBES AND NON-DBE SUBCONTRACTORS

RTA requires that all Subcontractors (DBEs and non-DBEs) performing work on this contract be promptly paid for work performed pursuant to their Agreements, in accordance with all relevant Federal, state, and local laws.

1. As per 49 CFR Part 26.29, RTA established a contract clause implementing this requirement and requires the Contractor to pay all Subcontractors (DBEs and non-DBEs) for satisfactory performance/completion of their work on the contract, no later than fourteen (14) calendar days from the Contractor's receipt of each payment from RTA.
2. The Contractor's approval of its Subcontractors (DBEs and non-DBEs) invoices shall not be unreasonably delayed, and the Contractor shall approve or reject them with written notice of deficiency or dispute to the payee Subcontractor (DBE and non-DBE) within ten (10) days of the Contractor's receipt of invoice.
3. In accordance with 49 CFR Part 26.29, RTA may elect to hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within fourteen (14) days after your payment to the prime contractor.
4. The Prime Contractor agrees to return retainage payments to each Subcontractor within fourteen (14) days after the Subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the RTA. This clause applies to both DBE and non-DBE subcontracts. A Subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a Subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Unless approved by RTA, the Contractor's failure to comply with the above provisions (a), (b) and (c), is a material breach of this Contract and may give RTA



just cause to impose one or more of the following penalties, until the required payment(s) to the Subcontractor(s) (DBEs and non-DBEs) is satisfied:

1. Withhold payments to the Contractor until the Contractor and/or higher-tier Subcontractor(s) pay the full amount determined to be owed to the Subcontractor.
2. Disqualify the Contractor from future bidding on RTA contracts as non-responsible.
3. Work with the Subcontractor to enforce any pertinent payment bond.
4. Pay the Subcontractor directly and deduct the amount from any retainage or monies owed by RTA to the Contractor.
5. Provide notice of default to the Contractor, stating the potential for termination or suspension of the contract, in whole or in part.
6. Issue a stop-work order until the Subcontractor is paid, which order must constitute an unauthorized delay under the contract that could result in liquidated damages for delay against the Contractor.

The Contractor shall ensure that tiered Subcontractors comply with this Section and that they insert the RTA's Prompt Payment Mechanisms/provisions of this Section into all lower-tiered subcontract Agreements with Subcontractor(s) (DBEs and non-DBEs).

On a monthly basis, the Contractor will be required to report payments to all Subcontractors (DBEs and non-DBEs) to RTA, using applicable forms/reporting mechanisms as designated by RTA. The Contractor shall ensure that all their Subcontractors (DBEs and non-DBEs) at every tier submit to RTA a monthly report of their receipt of payments from the Contractor, using applicable forms/reporting mechanisms as designated by RTA. All reports shall be submitted to RTA's designated staff.

## **F.2 PROMPT PAYMENT MONITORING, COMPLAINTS, AND DISPUTE RESOLUTION PROCEDURES**

RTA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt

payment. RTA commits to thoroughly investigating and finding ways and means to resolve prompt payment concerns and to ensuring that Subcontractors are treated fairly and paid promptly.

### **F.2.1 RTA's Prompt Payment Monitoring and Reporting Requirements**

RTA will manage and monitor compliance of the Contractor's payments to Subcontractors, DBEs, and non-DBEs, at every tier, over the course of this contract through the following methods.

1. After execution of this contract with the Contractor, the following reports must be submitted to RTA monthly:
  - » A report from the Contractor of its payments to DBE Subcontractors, using a reporting mechanism/form designated by RTA.
  - » A report from the Contractor of its payments to non-DBE Subcontractors, using a reporting mechanism/form designated by RTA.
  - » A report from DBE Subcontractors at every tier of their receipt of payments from the Contractor or Subcontractors, using a reporting mechanism/form designated by RTA.
  - » A report from non-DBE Subcontractors at every tier of their receipt of payments from the Contractor or Subcontractors, using a reporting mechanism/form designated by RTA.
  - » RTA will review the contract payments to determine whether the actual amounts paid to Subcontractors were equal to the amounts reported by the Contractor.
  - » Subcontractors are encouraged to report any issues pertaining to prompt payment or release of retainage directly to the appropriate RTA staff, via email, phone call, or any other methods they deem appropriate/necessary on an-ongoing basis.

- » If/when deemed necessary, RTA will follow up with the Contractor by phone and/or email on the status of any outstanding payments due to Subcontractors. RTA requires the Contractor to send confirmation when such outstanding payments have been made to Subcontractors. If/when deemed necessary, RTA will also reach out to the unpaid Subcontractors to discuss status of their invoices and to gather any relevant additional information as deemed applicable or necessary.

## **F.2.2 Complaints and Dispute Resolution**

Subcontractors are encouraged to try to resolve any issues pertaining to prompt payment or release of retainage directly with the Contractor (and any involved higher-tier Subcontractor(s)). If such resolution is not possible, RTA designated DBE staff/may utilize the following approach when receiving a complaint from a Subcontractor regarding issues pertaining to prompt payments or release of retainage:

1. Contact the Subcontractor directly to understand, validate, and collect all the applicable data associated with the complaint, which may include outstanding invoices, how long the invoices have been outstanding, understanding the steps taken by the Subcontractor thus far to resolve the issues and/or obtain payment before reaching out to RTA designated DBE staff, and any other relevant information.
2. Contact RTA's Project Manager and the Contractor (and any involved higher-tier Subcontractor(s)) as deemed applicable, to discuss the complaint and request all information deemed necessary to understand the nature of the complaint and to determine steps that may be taken to address the concern. RTA designated DBE staff should remind the Contractor of potential enforcement actions for non-compliance with the prompt payment or release of retainage provisions per this Contract with RTA.
3. Contact the Subcontractor again, if deemed applicable, to discuss the complaint considering the information gathered from RTA's Project Manager and/or the Contractor (and any involved higher-tier Subcontractor(s)).
4. If deemed necessary, contact the pertinent RTA procurement staff member and/or an assigned RTA's attorney and present all the facts and issues relevant to the complaint.

5. If deemed necessary, request separate meetings with the Subcontractor and the Contractor (and any involved higher-tier Subcontractor(s)) with or without the pertinent RTA procurement staff member and/or RTA's attorney.
6. If deemed necessary, host an internal meeting with all the appropriate RTA stakeholders to discuss the matter.
7. If deemed necessary, may conduct a settlement mediation with both the Subcontractor and Contractor (and any involved higher-tier Subcontractor(s)) present, with the pertinent RTA procurement staff member and/or RTA's attorney.
8. Based on the review of all the pertinent and associated documents received and reviewed by RTA as well as the interviews and the totality of the circumstances, if it is found by RTA's DBE staff/designee that payments to the Subcontractor/release of retainage should occur, RTA will instruct the Contractor to pay the Subcontractor. RTA's DBE staff/designee may find that the Contractor has not complied with this Contract's prompt payment or release of retainage requirements and determine that the Contractor owes payment to the Subcontractor. Such a determination will be in writing, issued by RTA's DBE staff/designee.
9. RTA's DBE staff/designee may seek internal consensus amongst RTA designated project Manager, pertinent RTA's procurement staff member, Legal and other internal staff as deemed appropriate and necessary to take the following actions:
  - » withholding monthly payments to the Contractor until the Contractor and/or higher-tier Subcontractor(s) pay the full amount determined to be owed to the Subcontractor,
  - » disqualify the Contractor from future bidding on RTA contracts as non-responsible,
  - » work with the Subcontractor to enforce any pertinent payment bond,
  - » pay the Subcontractor directly and deduct the amount from any retainage or monies owed by RTA to the Contractor,
  - » provide notice of default to the Contractor, stating the potential for termination or suspension of the Contract, in whole or in part, and/or

- » issue a stop-work order until the Subcontractor(s) is paid, which order shall constitute an unauthorized delay under the Contract that could result in liquidated damages against the Contractor.
10. Should RTA come to consensus, and RTA's DBE staff/designee determines that it cannot make findings by clear and convincing evidence, or that RTA has a conflict of interest in the determination of the issues presented, RTA shall rule that the Contractor or any higher-tier Subcontractors, and the Subcontractor should resolve the matter through other mechanisms, including legal proceedings, independent of RTA.
  11. RTA's final decision cannot be appealed to RTA. However, either party may file an action in State Court seeking a writ of mandamus to overrule RTA's findings.

### **F.3 JOINT CHECK UTILIZATION**

A joint check is a two-party check between a DBE Subcontractor, a Contractor, and a regular dealer of materials/supplies. All joint check arrangements with DBE Subcontractors must be pre-approved by RTA and must strictly adhere to the joint check requirements set forth in USDOT guidance regarding same. At a minimum, the request must be initiated by the DBE Subcontractor to remedy a financial hardship for a specific period. There may be monthly reporting requirements in order for the Contractor to receive DBE participation credit. RTA will closely monitor the use of joint checks to ensure that the independence of the DBE firm is not compromised. Joint check usage will not be approved merely for the convenience of the Contractor. Please note if Joint Checks are applicable, monthly reporting may be required by the RTA.

### **F.4 DBE REMOVAL/TERMINATION/SUBSTITUTION/REDUCTION OF SCOPE FROM CONTRACT**

The Contractor must have good cause to remove/terminate/substitute/replace a DBE Subcontractor and such removal/termination/substitution requires the consent and approval of RTA. This section also includes reductions to DBEs' scope of services and/or commitment values. No DBE Subcontract Agreement may contain a "termination for convenience" clause/provision because any termination for convenience provision/clause is contrary to the objectives of this part and the objectives of 49 CFR Part 26. To initiate the termination, substitution, removal, or

replacement process with a DBE Subcontractor/supplier (regardless of the tier), the Contractor or lower tier Contractor/Subcontractor must do the following:

1. Before transmitting to RTA its request to terminate and/or substitute a DBE Subcontractor, the Contractor must give notice in writing to the DBE Subcontractor. The notice must include its request to terminate and/or substitute, replace and/or remove the DBE, the reason(s) for the request and all documentation to support its claim. The Contractor must submit a copy of the notice and support documentation to RTA at the time the original letter is sent to the DBE Subcontractor.
2. The Contractor must give the DBE Subcontractor five (5) business days to respond to the notice. The DBE should provide RTA with reasons, if any, why it objects to the proposed termination of its DBE contract and why RTA should not consent to the Contractor's action.
3. RTA will then open an investigation inclusive of review of all documentation, conduct interviews and site visits, if necessary. The Contractor carries the burden of proof to demonstrate good cause for the termination and/or substitution.
4. If RTA determines the Contractor has good cause to terminate the DBE firm, RTA will provide written consent of DBE removal and the requirements to substitute work to another DBE firm. If RTA finds that good cause does not exist to terminate the DBE firm, RTA will provide a written denial of the request to terminate/replace the DBE Subcontractor and will immediately request a corrective action plan from the Contractor. If the Contractor elects to terminate, substitute and or reduce the scope of work initially committed to a DBE without the approval or consent of RTA, this constitutes a material breach of a contract as set forth under 49 CFR Part 26.13.

5. For purposes of good cause to remove, terminate, or replace a DBE, the following circumstances should exist: (1) failure or refusal by the DBE Subcontractor to execute a written contract without good cause, (2) failure or refusal by the DBE Subcontractor to perform the work of its subcontract in a way consistent with normal industry practice and the Contractor has not acted in bad faith, (3) failure by the DBE Subcontractor to meet the Contractor's reasonable bonding or insurance requirements, (4) insolvency, bankruptcy or credit unworthiness by the DBE Subcontractor that creates a risk for the contract, (5) ineligibility by the DBE Subcontractor to work on public works project because of suspension or debarment proceedings, (6) a determination by RTA that the DBE is not a responsible contractor, (7) voluntary withdrawal from the project by written notification that has been verified, (8) ineligibility to receive DBE participation credit for the type of work to be performed, (9) other documented good cause that compels the replacement of the DBE.
6. When a DBE Subcontractor is terminated with the approval of RTA or fails to complete its work on the contract for any reason, the Contractor is required to make good faith efforts to find another DBE Subcontractor to substitute for the original DBE.
7. The Contractor must show that it took all necessary and reasonable steps to find another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that RTA has established for the project. 49 CFR Part 26.53 shall serve as the criteria for evaluating compliance with the good faith efforts requirements.
8. The good faith efforts shall be documented by the Contractor. If RTA requests documentation under this provision, the Contractor shall submit the documentation to RTA within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the Contractor. RTA shall provide a written determination to the Contractor stating whether good faith efforts have been demonstrated.

The Contractor is required to comply with good faith efforts procedures as defined under 49 CFR Part 26.53. The Contractor shall ensure that tiered Subcontractors comply with good faith efforts requirements when a DBE is replaced, substituted,

terminated, or removed on a contract as defined under 49 CFR Part 26.53(f) and insert these provisions into all lower tiered Subcontractor Agreements.

Failure by the Contractor to comply with or implement these requirements is a material breach of RTA's contract, which may result in the termination of the contract or such other remedy as RTA deems necessary.

If the Contractor fails or refuses to comply in the time specified, RTA may issue an order stopping all or part of payments/work until satisfactory action has been taken. If the Contractor still fails to comply, RTA may issue a termination for default proceeds or whatever other measures or penalties RTA deems necessary.

## **F.5 CHANGES**

1. The DBE participation goal shall apply to the performance/dollar value of all obligations under this Contract, including any Changes, Modifications, Amendments and Change Orders whether initiated by the Contractor or RTA. Post award requests for partial waivers may be considered by RTA, but a final determination shall not be rendered until the contract has been substantially completed and the Contractor demonstrates lack of ability to satisfy the DBE participation goal.
2. Changes to the value or scope of work committed to a DBE Subcontractor must be pre-approved by RTA and must be for good cause as set forth in the termination, substitution, replacement provisions set forth in this document.



# Part G.

## Reporting, Audits and CUF Reviews Requirements

### G.1 POST AWARD DBE REQUIREMENTS:

1. The Contractor is required to complete and submit a report of its payments to its DBEs and non-DBE Subcontractors to RTA monthly, using a reporting mechanism/form designated by RTA.
2. The Contractor acknowledges that RTA has the right to independently confirm the information contained in the submitted reports/forms by soliciting such information from each DBE Subcontractor and non-DBE Subcontractor as may be required to verify payments received, distribution of payments received, subcontracting practices, participation credit, and sharing of resources/personnel. The Contractor shall not attempt to dissuade any such DBE Subcontractor or non-DBE Subcontractor from disclosing any such information or cooperating in any investigation initiated by RTA.
3. The Contractor shall submit DBE and non-DBE participation/payment reports only on applicable/designated forms/reporting mechanism provided/approved by RTA.
4. Each DBE and non-DBE Subcontractor shall submit to RTA a summary of payments received from its Contractor, regardless of their tier, using a reporting mechanism/form designated by RTA.

5. By committing to working on this project which is subjected to DBE requirements set forth under 49 CFR Part 26, all DBE Subcontractors at every tier, participating in this project is therefore required to undergo a CUF review/DBE compliance review before their contract can be closed by RTA. DBEs are required to fully cooperate with RTA during the compliance review process. The CUF review/DBE compliance review is purposed to ensure that work committed to DBEs is being performed by DBEs, ensure that the DBEs are performing at least 30% of the work with their own workforces, ensure adequate counting of DBE participation and/or to review and/or ensure that all activities engaged in/by the DBE is consistent with the intent and objectives of the DBE Program as per 49 CFR Part 26. The DBE Subcontractor may be subjected to an informal compliance review by RTA, with or without notice. The informal compliance review will generally be conducted at the work site where RTA's staff is able to observe and/or assess the services/supplies being provided by the DBE.
6. Once an alternative delivery contract is awarded, RTA will perform ongoing monitoring and oversight to evaluate whether the alternative delivery Contractor is using ongoing good faith efforts to comply with their initial OEPP and schedule. RTA may choose, at its sole discretion, to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the alternative delivery Contractor will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the alternative delivery Contractor continues to use good faith efforts to meet the goal and/or honor their initial DBE participation commitment. The Contractor will also be required to submit an annual report to RTA detailing all outreach, any mentor-protégé relationships, supportive services and all good faith efforts made throughout the preceding/past year and their outreach and strategy plan for maximizing opportunities and ensuring compliance with their DBE OEPP commitments in the upcoming year.

7. The Contractor or any of its Subcontractors at any tier that is utilizing a DBE Subcontractor may be selected for DBE compliance review to ensure that they are complying and following the DBE Program requirements as per 49 CFR Part 26. This process will be initiated in a formal manner with written notice and instructions sent to the Contractor or its Subcontractor. The process will conclude with a close-out interview or debriefing where the Contractor or Subcontractor firm will be given an opportunity to refute the determination or add to any corrective action requested by RTA. The Contractor must cooperate with any DBE Program audit or compliance review whether by RTA or a Federal agency. Failure to cooperate can result in part or all the DBE participation credit being denied/removed from counting toward the DBE participation goals for this contract.
8. The Contractor performing work under this contract is required to retain all records of participation on this project for at least three (3) years from the completion of this project. This requirement flows down to all lower tier Subcontractors and must be within their subcontract Agreements.

# Appendix A

## RTA DBE Procurement Forms

### PROCUREMENT/SOLICITATION REQUIREMENTS:

This checklist will help you verify that all the required *RTA DBE Procurement Forms* are completed and submitted as required. Submit this checklist as the front page of your *RTA DBE Procurement Forms*. Please Note: Any modification of any *RTA DBE Procurement Forms* prior to the official award of the contract will result in your bid/proposal being deemed non-Responsive. All *RTA DBE Procurement Forms* must be submitted with the bid/proposal unless it is an Alternative Delivery Procurement. If you have any questions concerning the completion of any of the *RTA DBE Procurement Forms*, please contact the RTA designated Procurement staff identified in this solicitation.

**The following *RTA DBE Procurement Forms* must be submitted with your bid or proposal as a matter of responsiveness.**

#### **[ ] DBE Form F: DBE Affidavit/DBE Utilization/Commitment**

This form must be completed, signed, and notarized by all Prime Contractors, whether DBE or not, to acknowledge the percentage of DBE utilization and DBE goal commitment in this project.

#### **[ ] DBE Form F-1: DBE Prime Affidavit//DBE Utilization/Commitment**

This form must be completed, notarized, and signed only if the bidder/proposer is a DBE submitting a proposal/bid as a Prime Contractor. This form, if applicable, must be submitted with a current DBE certification letter(s) from the MUCP to affirm DBE status.

#### **[ ] DBE Form G: DBE Schedule of Participation**

This form must be submitted by all bidders/proposers including DBE Prime Contractors. This form must include a list of DBEs that the bidder/proposer intends to do business with if awarded this contract. It must contain the following information: names and addresses of certified DBE firms, the scope of work they are to perform in this contract, the applicable NAICS codes (found in their DBE certification with MUCP) that coincides with the scope of work they will be performing in this contract, their projected start and finish date for work in this project as well as the dollar value of

each proposed certified DBE contract. Subsequent to the award of this contract, the Prime Contractor will be responsible for revising the initial *DBE Schedule of Participation* any time a new DBE is added to the project. The Prime Contractor must also submit a copy of the DBE certification letter to RTA with any new DBE(s) added to the project. RTA will only accept and approve new DBE(s) that are currently certified with MUCP under the NAICS code/s that coincides with the scope of work that they will execute in this project. The DBE firms listed on this *DBE Schedule of Participation* cannot be terminated, substituted nor do we allow reduction of work without the final approval of RTA. This form must be signed by the proposer/bidder.

**[ ] DBE Form H: Letter of Intent**

This form must be submitted by all bidders/proposers. It must contain the following information: names and addresses of each individual certified DBE firm listed on the *DBE Schedule of Participation*, the scope of work the DBE is expected to perform in this contract, the applicable NAICS codes (found in their DBE certification with MUCP) that coincides with the scope of work the DBE will be performing in this contract, the DBE's projected start and finish date for work in this project and the dollar value for the proposed certified DBE contract. This form must be signed by both the proposer/bidder and the DBE Subcontractor. Subsequent to the award of this contract, the Prime Contractor must submit this form for each additional new DBEs added to this contract.

**[ ] DBE Form I: Good Faith Efforts**

This form must be completed and submitted by all bidders/proposers that did not meet the specified DBE goal identified in this bid/proposal or were only able to meet part of the DBE goal in this bid/proposal. In addition to this form, bidders/proposers are required to document and submit adequate and sufficient good faith efforts as required under 49 CFR Part 26.53. If the DBE goal is met or exceeded by the bidder/proposer, please indicate N/A on this form.

**[ ] DBE Form J: Solicitation Statistics** – This form is for statistical purposes and the information requested is required under 49 CFR Part 26.11. All bidders/proposers along with all their proposed subcontractors, DBEs and non-DBEs must complete this form.

**[ ] DBE Regular Dealer/Distributor Affirmation Form** – This form is Per 49 CFR Part 26.53(c)(1), RTA will use this form to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for sixty (60) or forty (40) percent credit respectively, of the cost of the materials and supplies

based on its demonstrated capacity and intent to perform as a regular dealer or distributor under this contract.



## DBE FORM F - Prime Affidavit/DBE Utilization/DBE Commitment

**THIS FORM MUST BE COMPLETED BY ALL PRIME BIDDERS/PROPOSERS TO INDICATE THEIR PERCENTAGE OF DBE UTILIZATION AND GOOD FAITH EFFORTS COMMITMENT.**

---

RTA has specified a \_\_\_\_\_% DBE Participation goal on this project.

THIS BIDDER/PROPOSER IS COMMITTED TO MEETING \_\_\_\_\_% DBE PARTICIPATION/UTILIZATION IN THIS CONTRACT.

Per 49 CFR Part 26 Bidder/Proposers must make adequate good faith efforts to meet this goal to be deemed as a responsive Bidder/Proposer. Award of the contract will be conditioned on meeting the requirements of this section.

**The undersigned Bidder/Proposer hereby agrees and understands that they must comply with their DBE commitments utilization in this project in conformity with the Requirements, Terms, and Conditions of the DBE Procurement and Contract Requirements.**

Business Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF

\_\_\_\_\_ TO MAKE THIS AFFIDAVIT.

(Name of Business Entity)

\_\_\_\_\_  
(Date) (Affiant Print Name) (Title)

\_\_\_\_\_  
(Affiant's Signature)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

(Notary Public) (SEAL)



**DBE FORM F-1 - DBE Prime Affidavit/DBE Utilization/DBE Prime Commitment**

**THIS FORM MUST BE COMPLETED ONLY BY DBE PRIME BIDDERS/PROPOSERS TO INDICATE THEIR PERCENTAGE OF DBE UTILIZATION /COMMITMENT.**

RTA has specified a \_\_\_\_\_% DBE Participation goal on this project.

THIS BIDDER/PROPOSER IS COMMITTED TO MEETING \_\_\_\_\_% DBE PARTICIPATION/UTILIZATION IN THIS CONTRACT.

Per 49 CFR Part 26 Bidder/Proposers must make adequate good faith efforts to meet this goal to be deemed as a responsive Bidder/Proposer. Award of the contract will be conditioned on meeting the requirements of this section.

**The undersigned Bidder/Proposer hereby agrees and understands that they must comply with their DBE utilization/ good faith efforts commitments in this project in conformity with the Requirements, Terms, and Conditions of the DBE Procurement and Contract Requirements.**

Business Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, ZIP: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF

\_\_\_\_\_ TO MAKE THIS AFFIDAVIT.

(Name of Business Entity)

\_\_\_\_\_  
(Date) (Affiant Print Name) (Title)

\_\_\_\_\_  
(Affiant's Signature)

State of \_\_\_\_\_:

City and County of \_\_\_\_\_:

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

(Notary Public) (SEAL)





## DBE FORM G - DBE Schedule of Participation

NAME OF Contractor:

RTA Contract No.

Total Proposed Contract Cost: US \$ \_\_\_\_\_

DBE Firm Name	Address	Type Of Work (Electrical, Paving, etc.) and Contract Items or Part thereof To Be Performed	NAICS code(s)	Projected Start & Completion Dates for DBE	Agreed Price To Be Paid To DBE/Anticipated

1. Please list all DBEs involved on the contract including the Prime Contractor if it is a DBE. All DBEs listed on this form must be properly certified under the NAICS code(s) that coincides with the scope of work they will execute in this project. Work performed by DBEs for which they are not certified to perform will not count towards the DBE participation and/commitments. A current DBE certification for each listed DBE recorded on this schedule from the MUCP must accompany this form. Failure to provide proof of current DBE certification from MUCP for any or all listed DBEs will eliminate such listed DBE's participation, and work performed by such DBE will not count towards meeting the DBE participation and/commitments. If additional pages are required to list all contracted DBEs, photocopy this form as required to make a complete list.

2. Contracts with DBEs for materials or supplies will be counted toward the DBE goal as follows:

Materials or supplies obtained from a DBE manufacturer will be counted at 100% toward the DBE goal/commitment.

Materials or supplies obtained from a DBE regular dealer will be counted at 60% toward the DBE goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE goal.

Materials or supplies obtained from a DBE Distributor will be counted at 40% toward the DBE goals. Please refer to 49 CFR §26.55 for specifics with respect to how DBE participation is counted toward DBE goal; and

Materials or supplies obtained from a DBE broker firm only fees/commission will be counted toward the DBE goal.

After award of this contract, DBEs can be added to the DBE Schedule of Participation throughout the course of this contract and in some instances at different phases of this contract. After contract awards, the successful Contractor must obtain approval from RTA prior to adding any new DBEs on this



form. RTA will only accept and approve new DBE(s) that are currently certified with MUCP under the NAICS code/s that coincides with the scope of work that they will execute in this project.

-----  
NAME OF CONTRACTOR

-----  
SIGNATURE OF CONTRACTOR & DATE







Work Categories	Type of Bid (Subcontractor or Supplier)	Contractor 's Estimated Budget	Additional Comments

- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance or any necessary equipment, supplies, materials, etc.
- *[List any specific offers made by Bidder/Proposer/Contractor]*

--

- Solicited the following DBEs.

Date Contacted	Name of DBE Firm	Contact Person	Phone #	Work Category/NAICS codes

- Followed up with initial contacts.

Date	Name of DBE	Phone #	Bidding (Yes or No)	Additional Comments




- Contacted the following other agencies, organizations in recruitment of DBE including RTA:

Date	Organization	Phone #

As shown by the documentation provided to RTA, we feel that we have made adequate good faith efforts to attain the DBE goal but was not successful.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## DBE FORM J – SOLICITATION STATISTICS

RTA is required to create and maintain bidder's statistics for all firms bidding as Prime Contractors and bidding or quoting Subcontracts on USDOT assisted projects per 49 CFR Part 26.11. The primary Bidder/Proposer is required to make copies of this form for all their intended subcontractors whether DBE or non-DBE. The primary Bidder/Proposer is required to complete this form for their firm and send copies to each Subcontractor (whether DBE or non-DBE) and require each Subcontractor to complete and submit the completed forms with its subcontract bid documents to the primary Bidder/Proposer. The primary Bidder/Proposer must submit all completed forms with their Bid/Proposal to RTA.

Contract Number: \_\_\_\_\_

Contract Name:

\_\_\_\_\_

Firm Name: \_\_\_\_\_ Firm Address Including Zip Code (Office Reporting):

\_\_\_\_\_  
\_\_\_\_\_

**Status as a DBE or Non-DBE (check one. If Other, please specify):**

DBE \_\_\_\_\_ Non-DBE/Other \_\_\_\_\_

**Company Owner(s) Race/Ethnicity and Gender (optional)**

Male \_\_\_ Female \_\_\_ Gender not listed \_\_\_ Prefer not to specify \_\_\_

American Indian/Alaska Native \_\_\_ Asian American \_\_\_ Black or African American \_\_\_ Multiracial \_\_\_

Hispanic or Latino \_\_\_ Native Hawaiian and Other Pacific Islander \_\_\_ White/Caucasian \_\_\_

Other (Please Specify) \_\_\_ Prefer not to specify \_\_\_

**Annual Gross Receipts of the Firm: (check one):**

U.S. \$0 to U.S. \$500,000 \_\_\_\_\_ U.S. \$500,001 to U.S. \$1Million \_\_\_\_\_

U.S. \$1Million to U.S. \$5Million \_\_\_\_\_ U.S. \$5Million to U.S. \$10Million \_\_\_\_\_

U.S. \$10Million to U.S. \$20Million \_\_\_\_\_ U.S. \$20Million to U.S. \$30Million \_\_\_\_\_

U.S. \$30Million to U.S. \$40Million \_\_\_\_\_ U.S. \$40Million to U.S. \$50Million \_\_\_\_\_

Above \$50Million \_\_\_\_\_

**Age of the Firm:** \_\_\_\_\_

**NAICS BID CODE INFORMATION**



Enter the applicable North American Industry Classification System (NAICS) codes in the designated area below for products and/or services you desire to provide to RTA. Please refer to the NAICS bid code master list at <https://www.census.gov/naics/>.

Enter all applicable NAICS Bid Codes for your business:

\_\_\_\_\_

Enter all applicable NAICS Bid Codes for each scope for each scope of work your firm seeks to perform under this contract:

\_\_\_\_\_

Contact Name and Title:

\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_





## DBE Regular Dealer/Distributor Affirmation

Bidder Name: \_\_\_\_\_

Contract Name/Number: \_\_\_\_\_

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires UDOT/owner to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(a),(B),(C), and (3) under the contract at issue. The regulation requires UDOT's/owner's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. This form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally assisted contract with a DBE participation goal. This form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the UDOT's/owner's prior evaluation and approval. This form should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying.

DBE Name: \_\_\_\_\_ Total Subcontract/Purchase Order Amount:  
\_\_\_\_\_

Authorized DBE Representative (Name & Title): \_\_\_\_\_ NAICS Code(s) Related to  
the Items to be Sold/Leased: \_\_\_\_\_

- \_\_\_\_\_
1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES \_\_\_ NO \_\_\_  
**(If "YES" you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. Stop here. Read and sign the affirmation below. If "NO" Continue.)**
    - a) Are you selling bulk items (e.g.,) petroleum products, steel, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES \_\_\_ NO \_\_\_ (If "YES" Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from inventory maintained at your establishment, and will be minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

c) YES \_\_\_ NO\* \_\_\_ (If "YES" you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **Stop here. Read and sign the affirmation below.**)

**\*If 1.,1.a) and 1.b) above are "NO" your performance on the whole will not satisfy the regular dealer requirements; therefore,, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3 to determine if the items delivered from and by other sources are eligible for Distributor credit.)**

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? YES \_\_\_ NO^ \_\_\_  
(If "YES" you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **Stop here. Read and sign the affirmation below.**)

**^If "NO" your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)**

3. Will the written terms of your purchase order or bill of lading from a third-party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? YES \_\_\_ NO \_\_\_

a) Will you be using sources **other than** the manufacturer (or seller) to deliver or arrange delivery of the items sold or leased? YES \_\_\_ NO \_\_\_  
**If your responses to 3 and 3.a) are "YES" you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.**

**If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including**

**transportation charges for the delivery of materials or supplies may not be counted.**

I affirm that the information I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

---

**Printed Name and Signature of the DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

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**Printed Name and Signature of Bidder's Authorized Representative:**