

DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT REQUIREMENTS

1. DBE Policies, Obligations, Applicabilities, and Authorities

According to 49 CFR Part 26, all ODOT, all bidders, and all contractors shall agree to abide by and take all necessary and reasonable steps to comply with the DBE policies, obligations, applicabilities and authorities listed in the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

The definitions of and references to DBE goal, DBE commitments and crediting DBE participation shall apply solely to AFDBEs [African American DBE] and ASDBEs, [Asian American DBE] as defined in the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

The assigned DBE goal for this project is referred to in the project Special Provisions.

2. Eligibility Requirements for DBE Participation on Projects

Participation shall be accomplished by including certified DBEs in any part of the contract work that is necessary to complete the contract obligation. A certified DBE may participate as a prime contractor, subcontractor, joint venture, material supplier, material manufacturer, and professional service provider.

Only those DBE firms, certified in the types of work selected and identified as African American, Subcontinent Asian or Asian Pacific by the Office of Minority, Women, and Emerging Small Business (OMWESB) shall be eligible to fulfill required DBE participation contract obligations.

3. Crediting of DBE Participation Toward Meeting the Assigned DBE Participation Goal

(a) Crediting of DBE Participation in Bid Submission

Credit toward meeting the assigned DBE participation goal shall be granted only when the listed firms are currently certified by OMWESB as disadvantaged business enterprises and identified as African American, Subcontinent Asian or Asian Pacific. Bidders should not assume that a minority-owned or a woman-owned firm is currently certified by OMWESB as a DBE firm, that a certified DBE firm is certified as AFDBE or ASDBE, or that a firm is certified to perform any particular type of work. Bidders are encouraged to verify the DBE firms' certification by:

- 1) requesting a copy of the DBE certification letter from the committed DBE firm; or
- 2) contacting OMWESB at 503-986-0069. Bidders may also access updated certification list by going to the OMWESB web site at <http://www4.cbs.state.or.us/ex/dir/omwesb/>

For joint ventures, the percentage of DBE participation to be credited toward the goal will be determined or approved by the ODOT prior to bid opening on the basis of information submitted in the joint venture application according to Item No. 6 DBE Participation through Joint Venture.

(b) Crediting of DBE Participation Subsequent to Contract Award

The total dollar value of and the scope of work for the DBE commitment as shown on the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall be credited toward meeting the

assigned goal, provided the DBE performs a Commercially Useful Function according to 49 CFR 26.55(c)(1).

(c) Crediting of DBE Participation through the Use of DBE Manufacturers

The bidder may count 100% of its expenditure to a DBE manufacturer. According to 49 CFR 26.55(e)(1)(i), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.

The bidder may count 100% of its expenditures for a DBE firm that furnishes and places these materials **only if** the DBE firm is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE shall negotiate the cost, arrange delivery of, and pay for the materials and supplies required for the work of the contract. Invoices for materials will be invoiced to the DBE firm and not to the prime contractor.

(d) Crediting of DBE Participation Through Use of DBE Regular Dealers

The bidder may count only 60% of the committed amount for the cost of supplies and materials from regular dealers toward meeting the DBE goal. According to 49 CFR 26.55(e)(2)(i) a DBE regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

No credit will be granted if the prime contractor makes a direct payment to a material supplier. However, it will be permissible for a material supplier to invoice the prime contractor and the DBE jointly and be paid by the prime contractor making remittance to the DBE firm and material supplier jointly, provided such joint payment arrangements received prior written approval from the ODOT.

No credit will be granted if the prime contractor deducts from the amounts owed to DBE firms for work performed the costs for: (1) materials and service ordered by the DBE firm and used by the DBE in performing its work, (2) purchase price of supplies or materials acquired from the prime contractor by the DBE firm and used by the DBE in performing its work, and (3) cost of equipment leased or rented from the prime contractor by the DBE firm and used by the DBE in performing its work. Credit shall be withheld where such costs have been deducted from dollar amounts paid to DBE firms for work performed.

(e) Crediting of DBE Participation through Use of DBE Service Providers

Credit toward meeting the goal through use of DBE service providers shall be granted for:

(1) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the contract, provided that the fee or commission is determined by the ODOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials or supplies. The fee must be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the contract, provided that the fee or commission is determined by the ODOT to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(4) The total dollar value of payments to the DBE for which a Commercially Useful Function was performed in delivering a professional, technical and/or expert service.

(f) Crediting of DBE Participation Through Use of DBE Owner/Operator Trucking

A DBE owner/operator must own and operate one truck and be certified by the Office of Minority, Women and Emerging Small Business.

In order for the contractor or subcontractor to be credited and receive payment for DBE owner/operator trucking participation, a valid agreement that includes or has attached the following information must be submitted to the project manager:

- (1) Driver's name;
- (2) Copy of driver's license;
- (3) Vehicle identification number;
- (4) Copy of vehicle registration;
- (5) Motor vehicle license plate number;
- (6) Motor Carrier Plate Number;
- (7) Copy of ODOT Motor Carrier 1A Permit;
- (8) Name of owner/operator from the side of the truck; and
- (9) Method of payment (hour, ton or load)

(g) Crediting of DBE Participation Through Use of DBE Trucking Firms

In order for the contractor to receive credit and payment for the use of a DBE trucking firm, the trucking firm must be covered by a subcontract or written agreement that has been consented by ODOT's project management prior to the beginning of the work.

4. Documentation of Bidders' Proposed DBE Participation

(a) DBE Commitment Certification and Utilization Form

DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall become a part of the resulting contract. This certification and utilization form shall be used to determine the bidder's responsiveness to the DBE requirements.

If the assigned goal is zero, all of the required information above Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM must be completed and signed by the bidder's authorized representative. Failure to completely fill out information above Part I, sign, and submit the form with the bid shall be considered non-responsive.

If the assigned goal is greater than zero, all of the required information above Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM must be completed and signed by the bidder's authorized representative. Bidders shall also complete and submit with the bid Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM. The bidder shall fill in each committed DBE firm and its corresponding type of work, its capacity, and the subcontract amount, expenditure, fee, or commission. Failure to completely fill out, sign, and submit the form with the bid shall be considered non-responsive. The Agency will calculate each DBE amount, total the amount to be applied to the DBE goal and calculate the DBE commitment as a percentage of the total bid.

(b) DBEs Bidding as Prime Contractors

The requirements of section 4(a) will apply to DBE bidders from prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE subcontractors or suppliers will be counted.

DBEs bidding as prime contractors shall complete the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM indicating the percentage of work to be performed by its own forces as well as the work to be performed by other committed DBEs to meet the DBE goal.

(c) DBE Commitment Certification Form Part II - Good Faith Efforts

It is the intent of ODOT that all bidders meet the assigned DBE goal for participation by AFDDBEs and ASDDBs. It is recognized that in rare exceptions it may not be possible for all bidders to meet the goal. To determine whether the contract should be awarded to a bidder that has failed to meet the assigned goal, ODOT must decide whether the efforts made to obtain AFDDBE and ASDDBE participation constituted good faith efforts. ODOT will review the quality and intensity of those efforts. Efforts that are merely superficial are not good faith efforts to meet the goal.

In the event a bidder is unable to meet the assigned contract goal, the bidder shall provide additional information regarding good faith efforts per the requirements Part II of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM. The bidder must document the steps taken to obtain AFDDBE and ASDDBE participation, which demonstrate good faith efforts, such as those outlined below:

- (1) Evidence that the bidders attended any pre-solicitation or prebid meetings that were scheduled by ODOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
- (2) Evidence that the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- (3) Evidence that the bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publication, concerning the subcontracting or supply opportunities;
- (4) Evidence that the bidder provided written notice to a reasonable number of specific DBEs, identified from the DBE Directory of Certified Firms and identified as African American, Subcontinent Asian or Asian Pacific for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
- (5) Evidence that the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. This may include the information outlined below:
 - (a) The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - (b) A description of the information provided to the DBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - (c) Documentation of each DBE contacted but rejected and the reasons for the rejection.

- (6) Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (7) Evidence that the bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- (8) Evidence that the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by ODOT or contractor;
- (9) Evidence that the bidder's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- (10) Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women, and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- (11) Evidence that the bidder used the services of ODOT's Supportive Services contractor(s).

(d) Failure to Comply

All bidders, including certified DBE prime bidders, shall submit a completed and signed DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM with its bid.

If the bidder fails to properly and completely fill out the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM and/or to provide sufficient evidence of compliance with good faith effort requirements, the bid shall be considered non-responsive and the bid shall be rejected.

5. Contract Award Selection Procedure

In addition to the provisions of Sections 00120 and 00130 of the Oregon Standard Specifications for Construction, the following items will be considered in determining contract award:

- (a) The award of the contract will be in the best interest of the State of Oregon and will assure that the ODOT meets its commitment to its overall DBE goal.
- (b) If the low bidder offering a reasonable bid meets or exceeds the assigned goal, that bidder will be considered responsive to the DBE requirement.
- (c) If the review of the type of work for which a DBE firm is certified does not match the type of work shown on the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM (Part I) then the firm's participation on that contract cannot count toward the assigned DBE contract or overall DBE goals. The bidder will be determined non-responsive unless other certified DBE firms, with matching types of work have been listed or the bidder has established sufficient good faith efforts.
- (d) If the low bidder has not met the assigned goal, ODOT will review the documentation regarding its good faith effort activities to determine if the steps taken are satisfactory. If the steps taken are found satisfactory during the review process, that bidder will be considered responsive to the DBE requirement. If the steps taken are not found satisfactory, the bid will be considered non-responsive to the DBE requirement.
- (e) If the low bidder is determined to be non-responsive, ODOT, before awarding the contract, will notify the bidder in writing within 15 calendar days of the bid opening. The notification will

include the reason for the determination and provide the bidder an opportunity for administrative reconsideration.

Administrative Reconsideration includes:

- (1) The bidder will have the opportunity to provide written documentation or argument to the Review Committee, consisting of personnel knowledgeable with DBE Program requirements, concerning the issue of whether it met the goal or made adequate good faith efforts to do so, within four calendar days of the receipt of notification.
- (2) Upon request, the bidder will have the opportunity to meet in person with the Review Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (3) The Review Committee will make a decision on reconsideration within four calendar days after reviewing evidence of Good Faith Efforts.
- (4) The bidder will be notified in writing by the Review Committee regarding the decision of reconsideration within five calendar days of the decision. This notice will explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (5) The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

6. DBE Participation Through Joint Venture

Bidders who plan to bid as a joint venture with a DBE partner must be pre-qualified with the Oregon Transportation Commission under the provisions of ORS 279C.430 and Oregon Administrative Rule 734-010-0200 through 734-010-0380. The requirements of 49 CFR 26.55(b) also apply to bidders bidding as joint ventures. In addition to the standard pre-qualification process, there is a specific DBE Joint Venture Application Form. This form must be completed in order for the ODOT to determine DBE participation in the joint venture. Certification of DBE joint ventures shall be completed for and granted for each individual project. The DBE Joint Venture Application form will be provided by ODOT Procurement Office - Construction; 455 Airport Road S.E., Building K; Salem, Oregon 97301-5348; phone (503) 986-6916. The application must be received by Construction Contracts Section at least 10 days prior to the date of bid opening for each individual contract, and approval given prior to bid opening.

7. DBE Contract Compliance After Award and Before Contract Execution

ODOT will send the successful bidder written notice of acceptance and Award, including a request for further breakdown of the DBE information. Within ten calendar days after award and prior to contract execution, the successful bidder shall provide ODOT with a completed Committed DBE Breakdown and Certification Form describing the work to be performed by each DBE firm.

The successful bidder shall submit the following breakdown information: bid item, type of work, bid quantity and unit, unit price, and total price. Furthermore, the successful bidder shall indicate partial work on a bid item and explain the partial

item work. If trucking is a DBE committed work item, the successful bidder shall indicate if the DBE firm is an owner/operator trucking firm. The Prime Contractor and the Committed DBE Contractor shall sign the form.

FAILURE TO PROVIDE DETAILED DBE INFORMATION TO ODOT WITHIN TEN CALENDAR DAYS AFTER AWARD SHALL BE CAUSE FOR CANCELLATION OF THE AWARD AND WITHDRAWAL OF THE CONTRACT AND MAY BE CAUSE FOR FORFEITURE OF THE BID GUARANTY.

8. Information Relating to Contractors Soliciting Project Participation (Bidders List)

Within ten calendar days after bid opening, all bidders shall provide information requested in the Subcontractor Solicitation and Utilization Report, (see appendix), listing bona fide bids or quotes received on this project. The information provided will be used to construct a Bidders List required by 49 CFR 26.11(c).

9. Information Relating to the DBE Requirements on this Project

For further information concerning Disadvantaged Business Enterprise participation, including confirmation of certification for type of work, contact, in writing, C. Jill Miller not later than one week prior to the project bid opening at *ocrinforequest@odot.state.or.us*.

Other requests may be directed to:

Oregon Department of Transportation
Office of Civil Rights
955 Center Street NE, Room 471
Salem, OR 97301
Phone: 503-986-4350
Fax: 503-986-6382