

## **APPENDIX B**

***NOTICE OF REQUIREMENTS  
FOR  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)***

***May 2015***

**~Applies only if proposal price is \$500,000 or more for a construction contract or \$150,000 or more for a supply and service contract.**

**~APPENDIX B~**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

**1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:**

- A. The DBE requirements of the Authority's DBE Program Plan apply to this contract. Accordingly, the Contractor shall carry out the requirements of the Authority's DBE Program Plan and this Appendix in the award and administration of this U.S. Department of Transportation (US DOT) assisted contract.

**2. POLICY:**

- A. It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the US DOT that Disadvantaged Business Enterprises (DBEs) shall compete fairly to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority, the FTA and the US DOT that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

**3. CONTRACT GOAL:**

- A. If the bidder is not a DBE, the bidder agrees that the DBE goal for this Contract shall be met by subcontractors or by joint ventures with DBEs. The goal set forth for this Contract is 18 % of the final Contract price, including amendment and modification. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE certified firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

**4. DEFINITIONS:**

- A. **Appendix B.** The Notice of Requirements for Disadvantaged Business Enterprise, which when attached to a solicitation, implements the DBE requirements of the Authority's DBE Program Plan in the award and administration of federally funded Authority contracts.
- B. **Certified DBE.** means a for-profit small business concern (a) that is at least fifty one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty one percent (51%) of the stock is owned by one or more such individuals; (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (c) whose eligibility is evidenced by a current WMATA Certification letter, a D.C. Department of Transportation Certification letter, or a certification letter issued by the Metropolitan Washington Unified Certification Program (MWUCP).
- C. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.
- D. **DC DOT.** The District of Columbia Department of Transportation.
- F. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirements of the Authority's DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- G. **Joint Venture.** An association of a DBE firm and one (1) 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 shares in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- H. **Metropolitan Washington Unified Certification Program (MWUCP).** A unified certification program mandated by 49 C.F.R. §26.81 between two Federal transit recipients (WMATA and the D.C. Department of Transportation). The agreement became effective January 2005.
- I. **Pre-certification.** A requirement under 49 C.F.R. §26.81(c) that all certifications by the MWUCP be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
- J. **Race-conscious.** A measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.
- K. **Race-neutral.** A measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.

- L. **Small Business Concern.** With respect to firms seeking to participate as DBEs in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration implementing regulations (13 C.F.R. Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b).
- M. **Socially and Economically Disadvantaged Individual.** Any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.
- (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;
  - (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
  - (6) Women; and
  - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- N. **US DOT Assisted Contract.** Any contract between the Authority and a contractor (at any tier) funded in whole or in part with US DOT financial assistance, including letters of credit or loan guarantees.
- O. **Unified Certification Program (UCP).** The program mandated by 49 C.F.R. § 26.81(a), which requires all U. S. DOT recipients of Federal financial assistance to participate in a statewide certification program by March 2002.
- P. **WMATA.** Washington Metropolitan Area Transit Authority, the transit system (rail and bus) serving the metropolitan Washington area, including parts of Virginia and Maryland.

**5. HOW DBE PARTICIPATION IS COUNTED TOWARDS THE CONTRACT GOAL:**

DBE participation shall be counted towards meeting the DBE goal in accordance with the following:

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.
  - (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - (2) This amount includes 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 the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that a DBE performs with its own forces towards the DBE goal may be counted.
- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
  - (1) 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, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

- (2) 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.
  - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
  - (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the 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 lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
  - (6) The 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 terms 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.

- E. The following factors will be used to count expenditures with DBEs for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost of the materials or supplies will be counted towards the 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 the contract and of the general character described by the contract.
  - (2) If the materials or supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost of the materials or supplies will be counted towards the DBE goal. 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 and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. 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 as provided in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
  - (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared to fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.
- F. All DBE firms must be pre-certified. Participation by a firm that is not currently Authority certified as a DBE at the time of bid opening, does not count towards the DBE goal. All DBE firms must be in compliance with 49 CFR, Part 26.
- G. The dollar value of work performed under this Contract by a firm that MWUCP decertifies as a DBE does not count towards the DBE goal.
- H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal, until the amount being counted towards the goal has been paid to the DBE.

## **6. BIDS AND REQUIREMENTS (WITH THE BID):**

The bidder shall submit the following with its bid. Any bidder who fails to complete and return this information with its bid shall be deemed to be not responsive and may be ineligible for Contract award. Bidders that fail to meet the DBE goal above and fail to demonstrate “good faith efforts” to justify waiver of the DBE goal (See paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

- A. Completed “Schedule of DBE Participation” (Attachment B-1) sufficient to meet the above goal. If the bidder is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, it must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal. All offerors must attach current WMATA, DC DOT or MWUCP certification letters for each DBE listed on the Schedule.
- B. Executed “Letters of Intent to Perform as a Subcontractor/Joint Venture” (Attachment B-2). If the bidder is not a DBE or intends to satisfy the requirements through other DBE firms, then it must attach these letters from each certified DBE listed on the Schedule.
- C. Justification for grant of relief (Appendix B waiver of DBE goal). If in the submittal of its bid, the bidder fails to meet the DBE goal above, the bidder has the burden of furnishing sufficient documentation with its bid of its “good faith efforts” to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions that shall be considered as part of the bidder’s good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
  - (1) Soliciting 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 Contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - (2) Selecting portions of the work to be performed by DBEs in order 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 prime contractor might otherwise prefer to perform these work items with its own forces.
  - (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- (4) Negotiating in good faith with interested DBEs. It is the offeror's 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. 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. "DBE Unavailability Certifications" (Attachment B-3) shall be completed as appropriate.
- (5) An offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the Contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the Contract with its own organization does not relieve the offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs, if the price difference is excessive or unreasonable.
- (6) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.
- (7) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (8) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (9) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

**7. BID REQUIREMENTS (APPARENT LOW BIDDER):**

The bidder shall submit the following items within ten (10) calendar days after notification that they are the apparent low bidder:

- A. A copy of a current WMATA, D.C. DOT or MWUCP certification letter(s) shall be attached to the DBE Schedule of Participation to evidence DBE pre-certification.
- B. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive one hundred percent (100%) of the allowable credit for expenditures to DBE manufacturers/suppliers (Attachment B-4). By submission of this affidavit, the bidder certifies this it is satisfied that the manufacturer meets the requirements of 49 CFR Part 26.
- C. Schedule B Information for Determining Joint Venture Eligibility, if applicable (Attachment B-5, pgs. 1-4). Submittal shall be signed by all parties, dated and notarized.
- D. Copy of Joint Venture Agreement, if applicable. Submittal shall be signed by all parties, dated and notarized.
- E. Certification letter of the DBE regular dealer/supplier, if applicable. If the bidder wants to receive the maximum allowable credit for its expenditures for material(s) or supplies required under this Contract, from DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, stating that it is a regular dealer of the material(s) or supplies. By submission of this statement, the bidder certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.
- F. For design-build contracts, if a DBE goal is specified in the DBE GOAL/ REQUIREMENTS, the bidder shall submit, with its initial bid, a list of DBE-certified firms that it intends to enter into subcontract agreements with for this Contract. If no goal is specified in the solicitation and the bidder still intends to utilize DBEs in the performance of this Contract, the offeror shall submit with its initial bid a list of those DBE-certified firms. The documentation requirements of the solicitation shall be completed and submitted at the time of bid opening for any Contract in which a DBE goal is applicable or for any Contract in which there was no goal established, but the offeror identified DBE-certified firms that it intended to enter into subcontract agreements with in its initial bid. Any bidder who fails to complete and return the following information, if applicable, with its bid may be deemed to be not responsible and may be ineligible for Contract award. Offerors that fail to meet the DBE goal, if any, specified in the solicitation and fail to demonstrate a good faith effort and/or to justify waiver of the DBE goal, may be deemed to be not responsible and may be ineligible for contract award.

## **8. CONTRACT ADMINISTRATION REQUIREMENTS:**

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in each subcontract it awards in support of the DBE goal:

“The contractor 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 US DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate.”

- B. (1) The Contractor shall monitor the performance of, collect and report data on DBE participation to WMATA's Small Business Programs Office on the WMATA website at [www.wmata.com](http://www.wmata.com) under Doing Business with WMATA and on the attached “Prompt Payment Report-Prime Contractor's Report” (Attachment B-6) which shall be submitted monthly with each payment request. Failure to submit these reports may result in suspension of contract payments. The Contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or COTR, with their payment request, of any situation in which scheduled subcontractor payments have not been made and the reason therefore.
- (2) The Contractor shall require each subcontractor to report Prompt Payment data to WMATA's Small Business Programs Office online at [www.wmata.com](http://www.wmata.com) under Doing Business with WMATA and on a monthly basis using the attached “Prompt Payment Report-Subcontractor's Report” (Attachment B-7). The subcontractor shall certify that payment has been received.
- (3) The Contractor and the subcontractor are required to have Prompt Payment reporting training for each WMATA contract which has been awarded to them. Failure to complete this training may result in suspension of contract payments.

- C. The Contractor shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth above in this Appendix. The Contractor shall not have work performed nor the materials or supplies furnished by any individual or firm other than those named in the "Schedule of DBE Participation." If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for a DBE contractor named in the "Schedule of DBE Participation", the Contractor shall, within ten (10) days, notify the Contracting Officer and the Small Business Programs Office of that fact in writing on (Attachment B-8). A copy of this written request will be forwarded to the DBE vendor. The vendor shall have ten (10) days to respond in writing to the Contracting Officer. The Contracting Officer shall will meet with the DBE Liaison Officer to review the documentation submitted. A written determination will be made within ten (10) days on whether to approve or deny the request. There is no appeal to this decision. A copy of this decision shall be maintained in the contract file. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:
- (1) Evidence of change in ownership or circumstances regarding the firm's status as a DBE.
  - (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
  - (3) Dissolution, if a corporation or partnership.
  - (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor's ability to perform.
  - (5) Inability to furnish a reasonable performance or payment bond, if required.
  - (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
  - (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
  - (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its offer, but only where the Contracting Officer or other delegated Authority representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the offeror obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
  - (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

The Contractor must have the prior, written approval of the Contracting Officer and the DBE Liaison before substitution of a DBE subcontractor, regardless of the reason for substitution. Failure to obtain the Authority's approval could result in the Contractor's suspension or debarment.

If the request for substitution is approved, within thirty (30) days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified DBE firms. These efforts must be submitted in writing to the Contracting Officer and the DBE Liaison Officer. Examples of reasonable efforts include, but are not limited to the following:

1. documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder or the Authority;
  2. documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs;
  3. documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work; and
  4. evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner.
- D. The Contractor shall forward copies of all subcontracts to the DBE Office at the time of their execution.
- E. If the Contracting Officer or other delegated Authority representative determines that the Contractor has failed to comply with this Appendix B, he/she will notify the Contractor of such noncompliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the Contracting Officer or other delegated Authority representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix. The Contractor's failure to meet its Appendix B goal shall shift the burden to it to show that it has met the good faith requirements of this Appendix. After exhausting all of its administrative and legal remedies, if the Contractor is found to have failed to exert a "good faith effort" to involve DBEs in the work, the Authority may suspend or debar the Contractor.

- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- G. The Contractor shall keep records and documents for two (2) years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request, together with any other compliance information that such representative may require.
- H. If the Authority, FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program, the matter shall be referred to WMATA's DBE office, and WMATA's Office of Inspector General (OIG).
- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, that may result in the termination of this Contract or such other remedy as the Authority deems appropriate.

## **SUMMARY OF SUBMITTALS**

### **With the Bid:**

1. Completed "Schedule of DBE Participation" (Attachment B-1) with current certification letters attached for each listed DBE.
2. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Attachment B-2).
3. Justification for grant of relief (waiver of DBE goal), if applicable. Include completed "DBE Unavailability Certifications" (Attachment B-3) as appropriate.

### **Bid Requirements (Apparent Low Bidder)**

1. All DBEs must submit copies of their current WMATA or D.C. DOT certification letters or a certification letter issued by the MWUCP.
2. A DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive one hundred percent (100%) of the allowable credit for expenditures to DBE manufacturers/suppliers (Attachment B-4).
3. Schedule B Information for Determining Joint Venture Eligibility, if applicable (Attachment B-5, pgs. 1, 2, 3, 4).
4. Copy of Joint Venture Agreement, if applicable.
5. Certification letter of the DBE regular dealer/supplier, if applicable.

### **After Contract Award**

1. "Prompt Payment Report-Prime Contractor's Report" Attachment B-6) – submitted monthly.
2. "Prompt Payment Report-Subcontractor's Report" (Attachment B-7) - submitted monthly.
3. Request to substitute DBE contractor (see paragraph 8.C.) – submitted as required.
4. Copies of subcontracts-submitted at the time of their execution.

**SUBMIT WITH BID**  
**SCHEDULE OF DBE PARTICIPATION**

**Contract No.** \_\_\_\_\_

**Project Name** \_\_\_\_\_

**Name of Bidder** \_\_\_\_\_

The bidder shall complete this Schedule by identifying only those DBE firms, (with scope of work and price) who have agreed to perform work on this Contract. The prices shall be at an amount that is at least the DBE percentage goal for the total Contract. The offeror agrees to enter into a formal agreement with the DBE firm(s) listed for the work, at an amount equal to, or greater than, the prices listed in this Schedule, subject to award of a Contract with the Authority. If the total amount is less than the DBE percentage goal, a justification for waiver of DBE goal shall be attached to this Schedule.

Name of DBE Subcontractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
<b>Subtotal \$ DBE Subcontractors</b>			
Name of DBE Prime Contractor	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
<b>Subtotal \$ DBE Prime Contractor</b>			
<b>TOTAL \$ ALL DBE CONTRACTORS</b>		<b>TOTAL</b>	

\_\_\_\_\_ **Signature of Contractor' Representative**

\_\_\_\_\_ **Title**

\_\_\_\_\_ **Date**

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

Project Name: \_\_\_\_\_

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR/JOINT VENTURE  
(ALL ITEMS MUST BE COMPLETED)**

TO: \_\_\_\_\_  
(Name of Offeror)

The undersigned intends to perform work in connection with the above projects as (check one):

_____	An individual	_____	A corporation
_____	A partnership	_____	A joint venture

Specify in detail particular work items or parts thereof to be performed:

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

at the following price: \$

Please indicate \_\_\_\_\_ % of the dollar value of the subcontract that will be awarded to non-DBE contractors, if applicable. The undersigned will enter into a formal agreement with you for the above work upon your execution of a contract with the Authority.

\_\_\_\_\_  
Name of DBE Subcontractor/Joint Venture

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
WMATA Vendor ID #/DBE Cert. #

\_\_\_\_\_  
Signature & Title

\_\_\_\_\_  
Date

-----  
The following is to be completed by the Prime Contractor. A copy of this letter must be returned to the DBE subcontractor to indicate acceptance.

To: \_\_\_\_\_  
(Name of DBE)

You have projected your interest and intent for such work, and the undersigned is projecting completion of such work as follows:

WORK ITEMS	PROJECTED DBE COMMENCEMENT DATE	PROJECTED DBE COMPLETION DATE
_____	_____	_____

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Name of Prime Contractor &  
Acceptance Signature)

**SUBMIT WITH BID**

**DBE UNAVAILABILITY CERTIFICATION**

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_  
(Name) (Title) (Bidder)

certify that on \_\_\_\_\_ I contacted the following DBE contractor(s) to obtain offer(s) for work  
(Date)  
items to be performed on Contract Number \_\_\_\_\_

DBE Contractor	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.
_____	_____	_____

To the best of my knowledge and belief, said DBE contractors were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reason(s):

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

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

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

\_\_\_\_\_ was offered an opportunity to submit a bid on the above  
(Name of DBE Contractor)  
identified work on \_\_\_\_\_ by \_\_\_\_\_  
(Date) (Source)

The above statement is true and accurate account of why I did not submit an offer on this project.

\_\_\_\_\_  
(Signature of DBE Contractor)

\_\_\_\_\_  
(Title)

**M**

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## **DBE Certification Instructions**

### **Important Notice**

If you do not have a current, official letter of certification from WMATA, D.C. DOT or MWUCP, you are not pre-certified and are therefore not eligible to participate as a Disadvantaged Business Enterprise on the bid.

For those who wish to access the MWUCP certification application, it may be found on the internet at the following address:

<https://www.wmata.com/business/small-disadvantaged-business/index.cfm>. Go to "Procurement and Contracting", click on "Disadvantaged Business Enterprise", then click on "DBE Application for Certification".

49 CFR Part 26 gives Metropolitan Washington Unified Certification Program (MWUCP) ninety (90) days in which to process a complete DBE application. In order to become certified and participate in the MWUCP, you must comply with the procedures that follow. Certification must be final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

### **Instructions**

49 C.F.R. § 26.81(d) of the Certification Procedures requires a firm to be certified as a DBE in its "home state," where its principal place of business is located, in order to become certified outside such "home state". Therefore, you must attach to the MWUCP application, a copy of a valid DBE Certification letter from your home state's Department of Transportation. In addition, submit the pertinent documents for your company listed below. The application should be completed in full and NOTARIZED.

**General** (All firms must submit these documents.)

- Current (unaudited) Financial Statements;
- Prior three (3) years Federal Tax Returns;
- Resume of Principal(s) and Key Personnel;
- Third Party Agreements, such as Rental and Management Agreements;
- Licenses to Do Business;
- Personal Net Worth (PNW) Statement;
- Statement of Disadvantage;
- No Change Affidavit or Notice of Change (where applicable).

### **Corporations**

- Articles of Incorporation;
- By-Laws;
- Copies of any Stock Options;
- Copies of Stock Certifications of Each Holder;
- Copies of Stockholders' Voting Rights;
- Record of First Organizational Meeting.

## **Partnerships**

Partnership Agreement

## **Proprietorships**

IRS Employer ID Number  
WMATA Vendor ID#

## **Limited Liability Companies**

Operating Agreement with any amendments;  
Certificate of Formation, U.S. Income Tax Returns.

## **Change of Status Review**

On or before each certification anniversary date, you must submit a No Change Statement attesting that there have been no changes in the firm's circumstances affecting its ability to meet the eligibility requirements of 49 CFR Part 26 or WMATA's DBE Program Plan. Firms with changed circumstances must submit a Notice Regarding Change for review by the DBE Office. A review of these changes shall be made to determine if the firm is in compliance with the 49 CFR Part 26.

## **Affidavit Enclosure**

**NOTE:** When completing MWUCP Application, complete all information blocks. Type "N/A" if item does not apply to you or your firm.

**DBE MANUFACTURER'S AFFIDAVIT**

I hereby declare and affirm that I am \_\_\_\_\_ (Title)  
and duly authorized representative of \_\_\_\_\_ (Name of Company),  
a \_\_\_\_\_ owned and controlled enterprise  
whose address is \_\_\_\_\_

I further declare and affirm that company employees (persons not on the payroll of and/or performing the same tasks for disadvantaged owned business having any interest in the affiant's business) operate the following company equipment relative to the manufacturing process:

**Equipment**

Type	Function	Model	Age	Make
------	----------	-------	-----	------

Number of employees involved in the manufacturing process: \_\_\_\_\_

The undersigned swears that the foregoing statements are true and correct and fully understands that WMATA may rely on these statements in determining whether a WMATA prime contractor purchasing goods from the undersigned's manufacturing concern is entitled to a 100% credit of such purchases towards its DBE goal. The undersigned further understands that any material misrepresentation will be grounds for initiating action under Federal or state laws concerning false statements.

Signature of Affiant	Printed Name
----------------------	--------------

Date: \_\_\_\_\_ State: \_\_\_\_\_ County: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

before me appeared \_\_\_\_\_  
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by \_\_\_\_\_  
(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me \_\_\_\_\_  
(Notary Public)

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

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***Information for Determining Joint Venture Eligibility***

Page 1

.....  
Name and address of Joint Venture:

---

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Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Have you attached a copy of the Joint Venture agreement? ☐ Yes ☐ No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.  
.....

Name and address of Joint Venture partner: \_\_\_\_\_

---

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Status of firm: ☐ DBE. ☐ Non-Minority.

Does firm have current WMATA, D.C. DOT or MWUCP DBE certification? ☐ Yes ☐ No  
.....

Name and address of Joint Venture partner: \_\_\_\_\_

---

Contact Person: \_\_\_\_\_ Telephone: \_\_\_\_\_

Status of firm: ☐ DBE. ☐ Non-Minority.

Does firm have current WMATA, D.C. DOT or MWUCP DBE certification? ☐ Yes ☐ No  
.....

Describe the nature of the Joint Venture's business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:  
.....

**Information for Determining Joint Venture Eligibility**

Page 2

Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

Name of Partner	Percentage of Ownership	Profit and Loss Sharing	Capital Contributions including Equipment	Other Agreements
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTALS:

Identify by name, title, race, sex and company affiliation those individuals responsible for the management control of and participation in this contract:

1. Financial decisions, such as payroll, insurance, surety and/or bonding requirements:

Name: \_\_\_\_\_ Race: \_\_\_\_\_

Title: \_\_\_\_\_ Sex: ☐ Male ☐ Female

Company affiliation: \_\_\_\_\_

2. Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:

Name: \_\_\_\_\_ Race: \_\_\_\_\_

Title: \_\_\_\_\_ Sex: ☐ Male ☐ Female

Company affiliation: \_\_\_\_\_

3. Supervision of field operations:

Name: \_\_\_\_\_ Race: \_\_\_\_\_

Title: \_\_\_\_\_ Sex: ☐ Male ☐ Female

Company affiliation: \_\_\_\_\_

***Information for Determining Joint Venture Eligibility***

Page 3

.....

The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

\_\_\_\_\_

and the intended participation by each Joint Venturer in the undertaking. Further, the undersigned covenant and agree to provide the Authority current, complete and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's DBE Program shall have access to the information provided herein above for the purpose of establishing eligibility and authenticity of the minority/woman-owned status of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological and geophysical data furnished will be protected.

\_\_\_\_\_  
(NAME OF FIRM)

\_\_\_\_\_  
(NAME OF SECOND FIRM)

\_\_\_\_\_  
(SIGNATURE OF AFFIANT)

\_\_\_\_\_  
(SIGNATURE OF AFFIANT)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(PRINT NAME)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(DATE)

.....

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**M**

**Information for Determining Joint Venture Eligibility**

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.....  
Date: \_\_\_\_\_ State: \_\_\_\_\_ County: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_,

before me appeared \_\_\_\_\_  
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by \_\_\_\_\_

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me \_\_\_\_\_  
(Notary Public)

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

.....  
Date: \_\_\_\_\_ State: \_\_\_\_\_ County: \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_,

before me appeared \_\_\_\_\_  
(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he or she was properly authorized by \_\_\_\_\_

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me \_\_\_\_\_  
(Notary Public)

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

.....  
**M**

23.06c (Rev 10/99)

**Washington Metropolitan Area Transit Authority**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
MONTHLY PROMPT PAYMENT REPORT**

**PRIME – CONTRACTOR’S REPORT**

This report is required to be submitted to the Office of Procurement, DBE Branch 600 5<sup>th</sup> Street, NW, Suite 3C, Washington, DC 20001, pursuant to the requirements of WMATA’s DBE Program Plan and §26.29 of 49 CFR Part 26.

Contract No.: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

Name of Prime Contractor: \_\_\_\_\_ DBE – Yes or No

Prime Contract Amount: \_\_\_\_\_ Total Received this Reporting Period: \_\_\_\_\_ Total Received to Date: \_\_\_\_\_  
DBE Goal \_\_\_\_\_

Name of Sub-Contractor	DBE (Y/N)	Description of Work	Date of Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub-Contractor	% of Physical Work Complete
TOTAL							

I certify the information furnished with respect to DBE subcontractor performance correct to the best of my knowledge and represents a current status of the prime contractor with the DBE subcontractors for the designated period covered by this report. Further, those subcontractors, due payment pursuant to the terms of their subcontracts will be paid within ten days after receipt of payment from WMATA.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

**Washington Metropolitan Area Transit Authority**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
MONTHLY PROMPT PAYMENT REPORT**

**SUBCONTRACTOR'S REPORT**

This report is required to be submitted to WMATA's DBE Office, 600 5<sup>th</sup> Street, NW, Suite 3C, Washington, DC 20001, pursuant to the requirements of WMATA's DBE Program Plan and 49 C.F.R. §26.29.

Contract No.: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

Name of Subcontractor: \_\_\_\_\_ DBE – Yes or No

Subcontractor Contract Amount: \_\_\_\_\_ Total Received this Reporting Period: \_\_\_\_\_ Total Received to Date: \_\_\_\_\_

Name of Sub-Contractor	DBE (Y/N)	Description of Work	Date of Contract Awarded	Amount of Sub-Contractor Award	Amount Paid This Reporting Period	Cumulative Paid To Sub-Contractor	% of Physical Work Complete
TOTAL							

I certify the information furnished with respect to DBE subcontractor performance correct to the best of my knowledge and represents a current status for the designated period covered by this report. Further, those contractors, due payment pursuant to the terms of their subcontracts will be paid within ten days after receipt of payment from the Contractor.

By: \_\_\_\_\_

Title: \_\_\_\_\_

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

