

**NOTICE OF REQUIREMENTS FOR PARTICIPATION BY
DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

Pursuant to Title 49, Code of Federal Regulations, PART 26 (49 CFR, Part 26)

- I. **GENERAL** - The following shall be incorporated as part of the contract documents for compliance. If any requirements herein are in conflict with the general provisions, instruction to bidders, or special provisions applicable to this project, the requirements herein shall prevail unless specifically superseded or amended in the special provisions or by addendum.
- II. **DISADVANTAGED BUSINESS ENTERPRISE** - This project is subject to Title 49, Code of Federal Regulations, Part 26 entitled "Participation by Disadvantaged Business Enterprise in Department of Transportation Programs," hereinafter referred to as the "Regulation," and is incorporated and made a part of this contract herein by this reference.
 - A. **POLICY**. It is the policy of the U.S. Department of Transportation (DOT) and the Hawaii Department of Transportation and all of its political subdivisions (Department) that DBEs, as defined in the Regulation, have an equal opportunity to receive and participate in the performance of contracts financed in whole or in part with Federal funds under this contract. Consequently, the DBE requirements of the Regulation, apply to this contract.
 - B. **DBE OBLIGATION**. The contractor shall take all necessary and reasonable steps in accordance with the Regulation, to ensure that DBE's have an equal opportunity to compete for and perform on contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of contracts financed in whole or in part with Federal funds.
 - C. **DBE ASSURANCES**. The contractor 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 the Regulation in the award and administration of 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 Department deems appropriate.
 - D. **FAILURE TO COMPLY WITH DBE REQUIREMENTS**. ALL CONTRACTORS AND SUBCONTRACTORS ARE HEREBY ADVISED THAT FAILURE TO CARRY OUT THE REQUIREMENTS SPECIFIED HEREIN CONSTITUTES A BREACH OF CONTRACT AND, AFTER NOTIFICATION TO THE DOT, MAY RESULT IN TERMINATION OF THE CONTRACT OR SUCH OTHER REMEDY AS DEEMED APPROPRIATE BY THE DEPARTMENT.
 - E. Bidders shall fully inform themselves with respect to the requirements of this Regulation, particular attention is directed to the following matters:
 1. A DBE must be a small business concern, as defined pursuant to the Regulation, which is owned and controlled by one or more socially and economically disadvantaged individuals.
 2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor or subcontractor, or vendor of material or supplies.

3. A DBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
4. A DBE must be certified by the Hawaii State Department of Transportation (HDOT) before credit may be allowed toward the DBE goals.

III. **DBE GOAL FOR THIS PROJECT** - The total DBE participation goal (expressed in percentage terms of the contract dollar value of work performed) is composed of a percent goal for DBEs. This goal is applicable to all the contract work performed for this project and is indicated in the Proposal. The bidder shall indicate in the appropriate space provided in the Proposal form furnished by the Department, the percentage goal of the amount of his or her bid involving DBE participation he or she intends to use in the execution of this contract.

The DBE Percentage is determined as follows:

- A. Percentage shall be calculated as follows: $\text{Percentage} = \frac{\text{Contract Dollar Value of the work to be performed by DBE subcontractors and manufacturers plus 60\% of the contract dollar value to DBE suppliers}}{\text{Sum of All Items less Mobilization, Force Account Items and Allowance Items}}$.
- B. In determining the project DBE goal attainment for a prime bidder, the credit to be allowed such prime bidder for each DBE vendor of materials or supplies listed in his or her proposal will depend upon whether such vendor is (a) only a supplier of such commodities, or (b) a supplier who is also the manufacturer of such commodities, or (c) a supplier who is not the manufacturer but who is required to perform substantial alteration to such commodities before delivery to the prime contractor. The percentage of a vendor's quoted price to the prime bidder which will be credited will be 100% for vendors in the (b) and (c) categories, and 60% for vendors in the (a) category.
- C. Types of Truckers:
 1. Supplier: A firm which supplies the contractor or subcontractor the use of their trucks to transport material.
 2. Manufacturer: A firm which furnishes material with their trucks for the contractor or subcontractor.

IV. **DBE PROPOSAL INFORMATION** - With the exception of the DBE certification application, bidders are required to submit certain information with their bid proposals. Such information is subject to verification by the Department which may require additional information or clarification. The information shall include:

- A. Names of all subcontractors and DBE manufacturers and suppliers to be used, along with a complete description of work or supplies to be provided by each, the dollar amount to be paid to each, business start date, and the firm's completed annual gross receipts to the nearest million dollars. (See the Proposal.) Failure to list all subcontractor's nature of work and dollar amount of work shall result in the rejection of your bid. Firms intending to participate in this project as DBEs must be certified by HDOT no later than the bid opening date. Prime bidders must reasonably assure themselves that prospective subcontractors, manufacturers and suppliers claiming DBE

status are in fact certified as such on or before the bid opening date.

- B. Bidders must also attach a completed "DBE Confirmation Form" with their bid for each DBE listed. Bidders will not be given DBE credit for any DBEs listed without their written confirmation attached.

V. **AWARD OF CONTRACT** - The Department reserves the right to reject any or all bids. The award of contract, if it be awarded, will be to the lowest responsible bidder who meets or exceeds the contract DBE goal, or makes good faith efforts to do so, as determined by the Department.

- A. If the lowest responsible bidder meets or exceeds the total contract DBE goal, such bidder will be awarded the contract.
- B. If the lowest responsible bidder does not meet the total contract DBE goal, such bidder shall submit information sufficient to satisfy the Department that the firm made good faith efforts to meet the contract DBE goal no later than five (5) working days after notification from the Department, failure to meet this deadline will result in the rejection of your bid. If the Department is satisfied that the bidder has made sufficient good faith efforts to meet the contract DBE goal, the bidder will be awarded the contract.
- C. If the lowest responsible bidder does not meet the total contract DBE goal and does not demonstrate good faith efforts to the satisfaction of the Department, such bidder will be rejected as non-responsive. The Department will consider the next lowest responsible bidder for award in accordance with paragraph A or B above.

VI. **EVIDENCE OF GOOD FAITH EFFORTS** -The kinds of efforts that will be considered demonstrative of "Good Faith Efforts" include but are not limited to the following:

- A. Whether the bidder 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 and whether the bidder solicited interest within sufficient time to allow the DBEs to respond and if appropriate steps were taken to follow up with interested DBEs;
- B. Whether the bidder selected portions of work to be performed by DBEs and, where appropriate, broke out contract work items into economically feasible units to facilitate DBE participation even when the prime might otherwise prefer to perform these work items with its own forces;
- C. Whether the bidder 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.
- D. Whether the bidder negotiated in good faith with interested DBEs (evidence includes names, addresses and phone numbers; description of information provided regarding plans and specifications; and evidence as to why additional agreements could not be reached);
- E. Whether the bidder rejected DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities;

- F. Whether the bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance;
 - G. Whether the bidder made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services; and
 - H. Whether the bidder effectively used the services of available minority/women community organizations, contractors' groups or other organizations to provide assistance in recruitment and placement of DBEs;
- VII. **SUBCONTRACTING** - Submission of "DBE Proposal Information" required hereinabove will satisfy the subcontractor information required for this contract insofar as DBE subcontractors are concerned.
- A. No substitution of a DBE subcontractor shall be made at any time without the written consent of the Department, and
 - B. If a DBE subcontractor is unable to perform successfully and is to be replaced, the contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor;
 - C. Agreements between a bidder and a DBE in which a DBE promises not to provide subcontracting quotations to other bidders are prohibited.
- VIII. **PROMPT PAYMENT**.
- A. The contractor shall pay all subcontractors within 10 calendar days after receipt of payment from the State.
 - B. When a subcontractor has met all terms and conditions of the subcontract, and there are no bona fide disputes, the Contractor upon receipt of payment from the Department, shall make full payment to the subcontractor of all monies due including retainage within 10 calendar days. The Contractor must obtain approval from the Department to withhold retainage from any subcontractor who has completed their portion of the work.
- IX. **RECORDS AND REPORTS** - The contractor shall keep records as are necessary for the Department to determine compliance with the contractor's DBE obligations. The records kept by the contractor shall include:
- A. The names of all DBE subcontractors and vendors (for vendor indicate also if a supplier or manufacturer);
 - B. The nature of work of each DBE subcontractor and vendor;
 - C. The dollar amount contracted with each DBE subcontractor and vendor;

Records shall be available at reasonable times and places for inspection by authorized representatives of the Department and appropriate Federal agencies.

The contractor shall submit the "Monthly Report of DBE Participation" with their invoice. Payment will not be processed if the Report is not properly completed and