

**VERMONT AGENCY OF TRANSPORTATION
SUPPLEMENTAL SPECIFICATION**

Disadvantaged Business Enterprise Utilization

The Disadvantaged Business Enterprise (DBE) program is designed to ensure equal opportunity in transportation contracting markets and to address the effects of discrimination in transportation contracting. The program establishes a flexible 10 percent aspirational goal at the national level for the participation of disadvantaged business enterprises, including small firms owned and controlled by women and minorities. The Vermont Agency of Transportation (VTrans) has established a *Disadvantaged Business Enterprise (DBE) participation rate of 6.46% for the Agency's overall goal for FY 2016 – 2018*. VTrans is a recipient of funds from USDOT, and is implementing the following bidding procedure to assure that all such firms are offered the maximum opportunity to participate in the performance of subcontracts financed in whole or in part with federal funds.

A. Definitions

As used in this supplemental specification, the following terms shall have the following meaning:

1. **Disadvantaged Business Enterprise, (DBE)**, means a small business concern:
 - (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged 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) is certified by the Vermont Agency of Transportation as being owned and controlled by socially and economically disadvantaged individuals.

2. **Socially and Economically Disadvantaged Individuals** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
 - (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "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;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

- (iv) “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 Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
3. **Disadvantaged Business Enterprise Participation Schedule, to be submitted if a DBE contract goal has been set for this project.** It is a schedule completed by the Bidder. If the bid is a paper submission, please complete form CA-161 and include it in the proposal for this project, naming the disadvantaged firm(s), the name(s) and item number of the work to be subcontracted to the DBE, contract unit price for the item(s), and the actual agreed total price for which the DBE will perform said work on this project. If the bid is being submitted electronically through the Bid Express system, please provide the appropriate information in the DBE section of the program.
4. **Disadvantaged Business Enterprise Unavailability Certification, to be submitted if a DBE contract goal has been set for this project.** For paper submissions, it is a written certification, completed and submitted by the Bidder on the CA-162 form included in the proposal for this project detailing the unavailability of DBEs for certain work. For electronic submissions through the Bid Express system, please provide the appropriate information in the DBE section of the program.
5. **Specific Contract Disadvantaged Business Enterprise Goal,** means the percentage of the Bidder’s total contract bid amount to be subcontracted to contractors, suppliers, consultants, etc. owned and controlled by socially and economically disadvantaged individuals that are currently certified and in good standing in the VTrans DBE Program.
6. **Good Faith Solicitation Effort,** means the Bidder’s degree of effort to meet the specific contract DBE goals, including but not limited to the following:
- (a) whether the Bidder attended any pre-solicitation or pre-bid meeting that was scheduled by the Agency to inform DBE’s of the contracting and subcontracting opportunities;
 - (b) whether the Bidder advertised in general circulation, trade association, and other media readily available to DBEs of subcontracting opportunities;
 - (c) whether the Bidder provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time (at a minimum one (1) week in advance of the bid opening date) to allow DBEs to participate effectively;

- (d) whether the Bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether DBEs were interested;
- (e) whether the Bidder selected portions of the work to be performed by DBEs to increase the likelihood of meeting the DBE goals (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (f) whether the Bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- (g) whether the Bidder negotiated in good faith with interested DBEs, and did not reject DBEs as unqualified without sound reasons based on a thorough investigation of the DBE's capabilities;
- (h) whether the Bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance required by the Agency of Bidder;
- (i) whether the Bidder effectively used the services of available community organizations, contractor's groups, local, state and federal business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs. Bidders will be expected to solicit outside the State of Vermont for available, qualified DBE subcontractors; and
- (j) whether the Bidder provided proof of the unavailability of DBEs in accordance with the Disadvantaged Business Enterprise Unavailability Certification.

7. **Responsive Bid**, means a bid which is responsive to Standard Agency Specifications and Procedures.

B. Specific Contract DBE Goal

The specific contract DBE goal for this project shall be the percentage specified in the Project Special Provisions. This percentage shall reflect the actual dollar amount to be paid to the DBE(s) by the Contractor.

C. Bid Submission

Each bidder, must submit the following documents with the proposal:

1. A completed Disadvantaged Business Enterprise Participation Schedule, (CA-161) listing the qualified DBEs with which the Bidder intends to contract for the performance of portions of the work under the Contract, specifying the agreed price to be paid to each DBE for said work, identifying in detail the contract items or parts thereof to be performed by each such DBE, contract unit prices, total prices and other information required by the Schedule. No work shall be included in the Schedule which the Bidder has reason to believe will be performed by the prime contractor, or that the listed DBE will subcontract, at any tier, to a non-DBE; or

2. In the event the work listed on the Disadvantaged Business Enterprise Participation Schedule is not sufficient to fulfill the Specific Contract DBE Goal the Bidder must submit both the Disadvantaged Business Enterprise Participation Schedule (CA-161) and the Disadvantaged Business Enterprise Unavailability Certification (CA-162) listing the DBEs contacted by the Bidder, the items for which prices were solicited, and the reason the DBEs were not used.
3. The purpose of submitting the above documents is to show the Bidder's intent to:
 - a. Achieve the Specific Contract DBE Contract Goal; or
 - b. Partially achieve the Specific Contract DBE Goal, due to insufficient availability of DBEs; or
 - c. Not achieve the Specific Contract DBE Goal, due to unavailability of qualified DBEs.

In the event that the Bidder shows intent to either not achieve the specified DBE goal, or partially achieve the specified DBE goal, the Agency's evaluation of the bidder's good faith efforts, as required by Section D.2. of this specification, will focus only on those efforts made prior to bid opening. No good faith efforts conducted after the bid opening will be considered adequate to fulfill these bid submission requirements. Required bid submission information provided on the Disadvantaged Business Enterprise Participation Schedule and the Disadvantaged Business Enterprise Unavailability Certification will be used in determining the lowest responsive bidder. **Failure to provide Contract DBE participation information on these forms will result in the bid being declared informal.**

In the event the Bidder submits a bid through the electronic Bid Express system, all appropriate information must be provided in the DBE section of the program.

D. Award of the Contract

The Vermont Agency of Transportation reserves the right to reject all bids. The award of the contract will be to the lowest bidder responsive to the following criteria:

1. If the low Bidder fulfills Bid Submission requirements and meets or exceeds the specific contract DBE goals, the Agency considers the amount of the bid to be reasonable, and all other pre-award criteria are met, such a bidder will be successful Bidder.
2. If the apparent low bidder does not meet the DBE contract goal and the Agency considers the amount of the bid to be reasonable, such a bidder will be the successful bidder if he or she can show good faith efforts to meet the contract goals. Documentation supporting a Bidder's good faith efforts must be presented to the Agency's Civil Rights Officer within five (5) working days after the bid opening and include the following information:

- a. A written explanation of the efforts made by the low Bidder to meet the requirements of part A. 6 (a) through (j) of the Supplemental Specification for DBE Utilization. Each of the items (a) through (j) must be addressed individually and all supporting documentation demonstrating the low Bidder's efforts must be included.
 - b. A written explanation of other efforts made or methods used to encourage DBE participation on the project. Documentation that verifies these efforts must also be included.
3. If the low Bidder cannot satisfy the Agency that good faith efforts have been made, then the bid will be rejected and second low Bidder will be evaluated in the same manner. This procedure will continue, evaluating bids in ascending order, until either the contract DBE goal is attained or good faith efforts can be verified. The first bid meeting these criteria will be accepted, provided the total bid amount is considered reasonable by the Agency.
 4. Final determination of the low Bidder will not be made until the Agency is satisfied that all provisions of these Supplemental Specifications have been met.
 5. Prior to award of the contract to the low Bidder the participation of all listed DBEs will be verified and evaluated in accordance with the Agency's pre-award audit criteria.

E. Changing or Substituting DBE Firms After Award and Verification of Payment

Any substitution of named DBE firms must be approved in writing by the VTrans Office of Civil Rights and Labor Compliance. If the Contractor alters the list of DBE firms scheduled to participate in the contract and/or the specific items that the DBE was scheduled to perform, the Contractor must be able to demonstrate that the listed DBE is unable to perform because of default or over-extension on other jobs, or provide other similar justification. There must be a solid basis for change. It is not intended that a Contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for change.

If a listed DBE subcontractor is unable, following award to the low Bidder, to perform the items listed in the participation schedule, the Contractor must replace the listed DBE with another DBE subcontract of equal value or provide the Agency with documentation of good faith solicitation efforts as detailed in Part A 6(a) through (j) of this Supplemental Specification and explain why a substitute DBE could not be located. When a Contractor fulfills this requirement, a waiver will be issued by the Agency releasing the contractor from the DBE participation obligation.

Contractors are required to provide the Agency with copies of project work invoice payments to DBE subcontractors. These invoices shall be submitted to the Agency as payments are made and will be used to determine the final amount of project DBE participation, and whether Contract sanctions for non-compliance will be considered.

F. Sanctions for Non-Compliance

Each Contractor or subcontractor who fails to carry out the requirements set forth in these Specifications will be subject to a breach of contract and, after giving notification to the Federal Highway Administration; the Agency may terminate the Contract or subcontract or initiate any other remedy which it considers to be appropriate.

The standard penalty for failing to comply with this Supplemental Specification for DBE Utilization will be as follows:

An amount of money equal to the amount in which the Contractor fails to achieve the specific contract goal may be deducted from the final estimate and/or biweekly progress payments as the penalty for non-compliance with this specification.