

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts which the Consultant enters into pursuant to this contract. The Consultant must use good faith efforts to include DBE subconsultants. Consequently, the requirements of Title 49 CFR Part 26 apply to this contract. The Consultant must ensure that the DBE subconsultant(s) is performing a "commercially useful function" as defined in CFR 26.55.

At least \*\*\* percent of this contract shall be subcontracted to DBE firms who have been certified as a DBE by the Ohio Department of Transportation.

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

1. Prior to starting work, provide a written plan for DBE participation including a breakdown by PDP step if applicable (or similar breakdown by task), description of work to be performed by each DBE subconsultant, and projected percentage of DBE participation during each step of the work.
2. Provide an ongoing summary of DBE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.
3. Provide a quarterly report of the amounts actually paid to DBE subconsultants, and certification by the subconsultants of the amounts received.
4. Provide a written explanation if the level of DBE participation falls below the level stated in the DBE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Consultant shall request a waiver as noted below.

## **WAIVER PROCESS FOR DBE GOAL**

The Consultant must document the progress and efforts being made in meeting the goal for DBE participation. In the event the Consultant is unable to meet the DBE Goal placed on this project, a request for a waiver of all or part of the goal may be made to the Office of Consultant Services. The written request must indicate a good faith effort was made to meet the goal and be sent to the Administrator, Office of Consultant Services, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Consultant wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is deleted from the scope of services or non-performed for any reason, the Consultant may request a waiver for the portion of work excluded.

The Consultant must provide the following information and documentation when requesting DBE goal waiver:

1. Dollar value and % of DBE goal. Dollar value and % of waiver request.
2. Signed copy of each subcontract or purchase order agreement between the prime and DBE subconsultant utilized in meeting the contract goal.
3. Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with the DBEs.
4. Copy of dated written communication and/ or dated fax confirmation of DBEs that were not interested in providing services.

5. Documentation of all efforts to assign additional work to DBEs currently under subcontract, and if those efforts fail, efforts to secure additional DBE subconsultants, including copies of dated written communication and/ or fax confirmation of personal contact, follow up and negotiation with the DBEs.
6. Documentation of good faith efforts (GFE) to meet the DBE subcontract goal, by looking beyond the items typically subcontracted or consideration of subcontracting items normally performed by the prime as a way to meet the DBE goal.

The Department will review the submitted documentation and issue a written decision within ten (10) business days. The Consultant may request administrative reconsideration within 14 days of being informed that it did not perform a GFE. The Consultant must make this request in writing to the following official:

Ohio Department of Transportation  
Attention: Mark Kelsey, Deputy Director, Division of Contract Administration  
1980 West Broad Street  
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the consultant did not document sufficient good faith effort.

As part of this reconsideration, the Consultant will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the consultant a written decision on reconsideration explaining the basis for finding that the Consultant did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

## **SANCTIONS**

The Ohio Department of Transportation may issue sanctions if the Consultant chooses not to request a waiver, the Consultant fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort.

The Ohio Department of Transportation may impose any of the following sanctions:

- (1) letter of reprimand;
- (2) contract termination and/or
- (3) other remedies available by law including administrative suspension (consultant debarred from pursuing additional contracts).

Factors to be considered in issuing sanctions include, but are not limited to:

- (1) the magnitude and the type of offense;
- (2) the degree of the Consultant's culpability;
- (3) any steps taken to rectify the situation;
- (4) the Consultant's record of performance on other projects including, but not limited to:
  - a. annual DBE participation over DBE goals;
  - b. annual DBE participation on projects without goals;
  - c. number of complaints the Ohio Department of Transportation has received from DBEs regarding the Consultant; and
  - d. the number of times the Consultant has been previously sanctioned by the Department of Transportation; and
- (5) Whether the Consultant falsified, misrepresented, or withheld information.

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