

ADDENDUM NO. THREE

DATE: July 19, 2016
DEPARTMENT: Miami-Dade Aviation Department (MDAD)
ISD PROJECT NAME: General Civil Engineering Services
ISD CONTRACT NUMBER: E16-MDAD-03
SUBMITTAL DATE: August 10, 2016
CONSULTANT COORDINATOR: Cristina Amores

This Addendum is issued to clarify and/or modify the previously issued Notice to Professional Consultants (NTPC), and is hereby made part of the NTPC. All requirements of the NTPC not modified herein shall remain in full force and effect as originally set forth. Please be sure to acknowledge receipt of this Addendum on the Letter of Qualifications (LOQ) - Section (I) – Project Information.

MODIFICATIONS:

1. Delete Exhibit "A" – Disadvantaged Business Enterprise (DBE) Participation Provisions, in its entirety and replace with attached Exhibit "A" - Disadvantaged Business Enterprise (DBE) Participation Provisions (ADDENDUM No. 3).

ALL OTHER PROVISIONS OF THE ORIGINAL "NOTICE TO PROFESSIONAL CONSULTANTS" REMAIN UNCHANGED.

Attachment:

Exhibit "A" - Disadvantaged Business Enterprise (DBE) Participation Provisions (ADDENDUM No. 3)

ec: Kristina Guillen; MDAD
Clerk of the Board



SPECIAL PROVISION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) **PARTICIPATION PROVISION** **CONTRACTOR**

Disadvantaged Business Enterprise (DBE) participation goals are applicable to airport construction and design contracts that receive federal Airport Improvement Program (AIP) grants. The contract to be awarded under this solicitation is subject to the DBE Program requirements described below.

01 OBLIGATIONS

- (a) *The Contractor, sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Contractor shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contract. The MDAD DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. The MDAD may impose sanctions to contractors who fail to carry out the terms of this Provision as provided under Part 26.*
- (b) Each sub-contract the prime contractor signs with a sub-contractor must include the following assurance:

"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 this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedies as the MDAD deems appropriate."

02 ELIGIBILITY

To be eligible for participation in a Federally-assisted contract as a DBE, a company must be a business organized for profit and must qualify as a Disadvantaged Business Enterprise (DBE) under 49 CFR Part 26. The definition of a DBE is provided in Special Provision (SP) (07)(A).

The apparent successful Respondent who claims DBE status, and all of its subcontractors claiming DBE status, must be certified by the Florida Unified Certification Program (FLUCP) prior to Bid Submittal and are subject to a thorough investigation to establish status as a DBE, in accordance with the criteria specified in SP (07)(A) and 49 CFR Part 26. All DBE firms shall keep their DBE certifications current throughout the life of the contract. If a DBE certified firm participating in this contract outgrows the small business size standard during the term of this contract, the firm will continue to be considered a DBE for purposes of calculating DBE participation for this contract until this contract expires. If a DBE certified firm participating in this contract becomes ineligible for DBE certification for any reason other than growth in its annual gross receipts during the term of this contract (e.g., the DBE is purchased by a large firm), the MDAD reserves the right to require the Contractor to substitute a certified DBE firm to perform the ineligible DBE's work under this contract.

Application for certification as a DBE may be obtained by contacting the Florida DOT Equal Opportunity Office located at FLUCP 605 Suwannee Street, MS 65 Tallahassee, Florida 32399-0450. Telephone (805) 414-4747, Fax: (805) 414-4879, or their Website: www.dot.state.fl.us/equalopportunityoffice. The Miami-Dade County, Internal Services Department, Small Business Development Division (SBD) is a certifying member of Florida Unified Certification Program (FLUCP) and can also be contacted for DBE certification. SBD is located at 111 N.W. 1st Street, Stephen P. Clark Center, 19th Floor, Miami Florida 33128-1974 or by telephone at (305) 375-3111 or Facsimile at (305) 375-3160, or visit their website at: www.co.miamidade.gov/sba/home.asp.

The Florida UCP updates the certification data every 24 hours and revises the database regularly. The database lists the firm's name, address, phone number, date of most recent certification, certifying agency and type of work the firm has been certified to perform.

03 DBE PARTICIPATION

- A. The Respondent will be required to submit the following information with its Qualification Statement, in order to be deemed responsive:
- DBE Utilization Form/Letter of Intent (Exhibit A)
 - DBE Contract Participation Form (Exhibit B)
 - Respondent (Bidders) and Subcontractor's Information Form (Exhibit C)
 - DBE Certification approved by the Florida Unified Certification Program (FLUCP).
 - DBE Goal Waiver Request Form (if required) (Exhibit D)
 - DBE Unavailability Certification Form (if required) (Exhibit E)

All required DBE documents must be completed and submitted. Failure to submit the required documentation may render the Qualification Statement non-responsive.

The DBE goal is listed in SP (03) (B) below. By signing the offer, Respondent commits to make good faith efforts to achieve the DBE goal listed in SP (03)(B)(1) below and Exhibit A, unless a waiver request meeting the requirements of SP(04) is submitted with the bid/offer. Failure to sign the offer noted in Exhibit A or submit a waiver request with the offer will result in the offer being found to be in non-responsive with the RFP and rejected. The MDAD will treat all other matters of DBE participation (for example, whether the Respondent has made a good faith effort to meet the DBE goal, the sufficiency of the submitted Contract Participation Form (Exhibit B), or whether a DBE for whom pre-award substitution is sought was proposed in good faith) as matters relating to the Respondent's responsibility that the MDAD may determine prior to award through communications with the Respondent(s) in question.

B. The following DBE participation clauses apply to this solicitation:

1. The DBE goal for this solicitation is twenty-three (23.0) percent of the estimated amount included in the attached worksheet for this project (amount subject to negotiation with the Successful Respondent). The twenty-three (23.0) percent DBE participation shall be computed as outlined in SP (03) (D). The Contractor shall prompt, using reasonable measures, all DBE firms participating in this contract, including itself if it is a DBE, to renew their DBE certifications and notify the MDAD Minority Affairs Division (MDAD-MA) immediately of any change in status that would affect their eligibility for DBE certification.
2. If the Respondent is not a DBE, the DBE goal may be met by first tier subcontracts with DBEs.
3. No Respondent that seeks to meet the DBE goal through subcontracting shall be considered to have met this goal unless the DBE subcontractor(s) is certified by the FL UCP as DBE and performs a commercially useful function as defined in SP (07)(F).
4. When modifications to the contract increase the total dollar value of the contract, the Contractor shall make best efforts under the circumstances to maintain the DBE participation of twenty-three (23.0) percent, so that by completion of the contract, twenty-three (23.0) percent of the estimated amount included in the attached worksheet for this project (amount subject to negotiation with the Successful Respondent) will have been performed by DBEs. The Contractor must submit a revised Contract Participation Form and Revised Utilization Form (s), or other documentation acceptable to the MDAD-MA, which reflects changes in the DBE participation associated with the modifications to the contract.
5. The MDAD discourages Respondents and contractors from the practice known as "shopping the contract" when such practice results

in a disparate impact on subcontractors at any tier. Although Respondents and contractors are expected to provide the MDAD with the best value possible for the work performed, this expectation should not be construed to mean that the MDAD expects or condones any subcontractor, including DBEs, to perform work at an unreasonably low price.

6. The MDAD is committed to significant participation of minority and woman-owned business enterprises in this contract, and encourages Respondents to meet the DBE participation goal with significant participation by minority owned businesses who qualify as DBEs.
- C. Where subcontracting is proposed, the MDAD may evaluate the amount of work subcontracted, the industry practices involved, and any other relevant factors in determining whether the DBE is performing a commercially useful function, as defined in SP (07)(F). If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or the DBE subcontracts a greater portion of its work than would be expected on the basis of normal industry practice for the type of work involved, it may be presumed that the DBE is not performing a commercially useful function.
- D. Computing DBE participation

Respondents shall apply the following rules to determine whether their DBE participation will meet the contract's DBE goal (SP (03) (B.)(1.)):

1. When a DBE participates in a contract, only the value of the work actually performed by the DBE can be counted toward the DBE goal.
2. A prime Respondent who is an eligible DBE certified by the FL UCP can count the amount of its own participation in the contract towards the DBE goal, provided that it is performing a commercially useful function as defined in SP (07) (F). Subject to the conditions in SP (03)(D) (4-11) below, it can also count the total value of the work that other DBEs perform under a subcontract, provided that the DBE is performing a commercially useful function and is certified by the FL UCP.
3. Once a prime contract or subcontract has been awarded to a certified DBE, the DBE must remain certified until its work is complete on the project. The dollar value of work performed under this contract by a firm after it has ceased to be certified as a DBE, or if its certification lapses, will not be counted toward DBE participation.
4. The MDAD will not credit the participation of a DBE subcontractor toward the prime contractor's DBE achievement until the amount being counted has been paid to the DBE.

The following subsections discuss the MDAD's approved methods of calculating DBE participation for certain types of subcontracts.

5. A non-DBE prime Respondent who plans to subcontract work to DBE contractors may count toward its DBE goal only the total dollar value of first tier subcontracts that DBEs will self-perform, provided that:
 - a. Each first tier DBE subcontractor is an eligible subcontractor that has been certified as a DBE by the FL UCP; and
 - b. Each first tier DBE subcontractor is performing a commercially useful function in the work of the contract as defined in SP (07)(F).
6. A non-DBE prime Respondent who plans to obtain supplies or materials from a DBE manufacturer (i.e., a producer of goods from raw materials or one which substantially alters them before resale) may count towards its DBE goal the total dollar value of first tier DBE manufacturer subcontracts provided that:
 - a. The manufacturer has been certified as a DBE by the FL UCP; and
 - b. The DBE assumes the actual responsibility for directly manufacturing the materials or supplies.
7. A non-DBE prime Respondent who plans to obtain supplies or materials from a DBE stocking distributor or stocking supplier may count towards its DBE goal sixty percent (60%) of the first tier DBE distributor and stocking supplier contracts provided that:
 - a. The stocking distributor or stocking supplier has been certified as a DBE by the FL UCP; and
 - b. The DBE assumes the actual responsibility for directly providing the materials or supplies.
8. A non-DBE prime Respondent who plans to obtain materials or supplies from a DBE non-stocking supplier or distributor, (i.e., a DBE broker, agent, or packager) may count only the broker, agent or packager fee plus transportation cost (usually not more than five percent (5%) of the total value of the subcontract) toward its DBE goal provided that the DBE broker, agent or packager is certified as a DBE by the FL UCP.
9. A non-DBE prime Respondent who plans to obtain the services of a DBE hauling/trucking firm may count towards its DBE goal:

- a. The full value of the transportation services provided by the DBE, provided that the DBE hauling/trucking subcontractor is using trucks it owns, insures, and operates using drivers it employs, is performing a commercially useful function as defined in SP (07)(F)(2) and is certified as a DBE by the FL UCP under an appropriate North American Industry Classification System (NAICS) code. The DBE may also receive credit for the full value of the transportation services it provides using trucks leased from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from a non-DBE firm 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.
 - b. The cost of materials/supplies may not be counted toward the total value of the hauling firm's subcontract unless the DBE hauling firm is also certified as a DBE stocking supplier or non-stocking supplier, and requirements in SP (03)(D)(7) or (8) are met. The total subcontract value, the hauling/trucking fee, and the materials price shall be listed on Exhibits B as separate line items.
10. A non-DBE prime Respondent who plans to lease or rent equipment from a DBE equipment rental firm may count the total value of the rental/lease contract provided that:
- a. The DBE equipment rental firm is certified as a DBE by the FL UCP under an appropriate NAICS code; and,
 - b. the equipment is used for the performance of a distinct element of the contract work; and,
 - c. the rental/lease cost(s) are not in excess of industry standard rates for leased or rented equipment; and,
 - d. the DBE equipment rental firm must actually own or control the equipment and maintain a yard or other facility where such equipment is stored.

E. Respondent Conformance with DBE Requirements

1. Documents to Be Submitted with Bid/Offer Submission

- a. To be in conformance with this solicitation, the Respondent is required to commit to meeting the DBE participation goal noted in SP (03) above. **The Respondent's signature on this offer signifies its commitment to the goal.** If the Respondent is unable to commit to all or any portion of the DBE goal, it must submit a DBE Goal Waiver Request Form (Exhibit D) in accordance with the requirements of SP (04) below with this offer to be in conformance with this solicitation.

- b. Contract Participation Form

All Respondents (including those who are FL UCP certified DBEs who plan to count themselves to fulfill the DBE goal) shall submit a Contract Participation Form (Exhibit B) with their offers. Exhibit B is to list all firms that are participating in the contract and to provide all information required by the Exhibit. This form must be signed and dated by the prime contractor's representative.

- c. Bidder List

The Department of Transportation regulations under 49 CFR Part 26 require all Respondents to identify all firms (DBEs and non-DBEs) who attempted to participate as subcontractors or suppliers on this federally assisted contract. All Respondents shall complete the Bidder's List (Exhibit C), including all firms, both DBEs and non-DBEs, that quoted to Respondent on potential subcontracts and supplies for this contract.

- d. DBE Utilization Form (Offer/Acceptance Form)

The Respondent shall submit original signed Letters of Intent (Exhibit A) from each of the DBEs identified on the Contract Participation Form (Exhibit B) as those firms which will perform work to meet the DBE goal of this solicitation. Each DBE Utilization Form shall be completely filled out and signed by the DBE and co-signed by the Respondent. A detailed description of the DBE's scope of work must be provided on Exhibit B.

Under this solicitation, the signed DBE Utilization Form represents intent by the DBE to perform the subcontract at the price stated on the Contract Participation Form (Exhibit B), if the offer is accepted by the MDAD without negotiation. However, if price negotiation occurs, the Respondent shall submit to the MDAD a revised Exhibit B with its revised offer, and within three (3) business days after the Contracting Officer's request (Exhibit B). The Respondent is not required to renegotiate prices with any DBEs identified on the initial Exhibit B; consequently, the

revised Exhibit B submitted after negotiations between the MDAD and the Respondent is not required to show any change to the original price agreed to by the DBE.

e. DBE Certification

1. All DBEs must be certified by the FL UCP as DBEs pursuant to 49 CFR Part 26 prior to Bid submittal.
2. All DBEs shall keep their DBE certifications current and shall immediately notify the MDAD if they become ineligible for DBE certification.
3. Failure to Submit Documents and Information

Failure to submit Contract Participation Form (Exhibit B), DBE Utilization Form/Letters of Intent (Exhibit A), Bidder's List (Exhibit C), DBE Goal Waiver Request Form (Exhibit D, if needed), and DBE Unavailability Certification (if needed) by a deadline of Bid Submittal or as specified by the Contracting Officer, may result in rejection of the bid/offer.

04 REQUEST FOR WAIVER

- A. If a Respondent is unable to meet all or any part of the DBE participation goal, the Respondent must submit a Request for Waiver (Exhibit D) of the goal with the offer. The Request for Waiver must demonstrate that the Respondent has made a good faith effort to meet the DBE participation goal. The Request for Waiver must include a detailed report of the efforts employed by the Respondent to meet the DBE goal, and such reporting must sufficiently satisfy the MDAD that the requested waiver is justified. If the MDAD is not satisfied that the requested waiver is justified, the Respondent will be notified in writing that the good faith efforts were not met. The notification will provide the Respondent an opportunity for an administrative reconsideration. The request for administrative reconsideration shall be postmarked not later than seven (7) days after the initial notification of denial of the waiver was received by the Respondent. As part of this administrative reconsideration, the Respondent will have an opportunity to provide written documentation and argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. If requested, the Respondent will be provided an opportunity to meet with the reconsideration official prior to the issuance of a final decision. If the reconsideration official determines that good faith efforts were not made, the MDAD may reject the offer. The Respondent will be notified of the reconsideration official's decision in writing. The decision is final and is not administratively appealable to the U.S. Department of Transportation. Note: A waiver of any portion of the DBE goal does not relieve the Respondent of its responsibilities and requirements under SP (03)(E) concerning submission of the Contract Participation Form, DBE Utilization Form (including Letter(s) of Intent) and certification documents for the DBE participation that the Respondent has proposed.

- B. The Respondent's report supporting the waiver request shall include documentation to substantiate that good faith efforts were made. The Request for Waiver Procedure Form (Exhibit D) contains a sample list of the efforts that a Respondent may make. This list is not intended to be exclusive or exhaustive.

The good faith efforts of an Respondent shall be evaluated by the MDAD to determine whether the efforts to obtain DBE participation were those that a firm aggressively seeking subcontractors would take in the normal course of doing business; whether the steps taken had a reasonable probability of success; and whether based upon the size, scope and complexity of the subcontract, there were qualified DBE firms available and willing to accept the contract at a competitive price.

Efforts that are merely pro forma are not good faith efforts to meet the goal. Efforts to obtain DBE participation are considered pro forma, even if they are sincerely motivated, if, given all relevant circumstances, they could not reasonably be expected to produce a level of DBE participation to meet the DBE goal. For example, advertising or bulk mailings, alone or together, are considered pro forma and not good faith efforts unless followed up with telephone calls and/or correspondence consistent with normal business practice. If the DBE provides an offer, reasonable efforts to negotiate must be demonstrated.

- C. Documents Required for Good Faith Efforts Waiver

1. The Request for Waiver of the DBE goal, the Report of Good Faith Efforts, and all documentation of good faith efforts (Exhibit D) shall be submitted by a Respondent with its offer by the bid/offer deadline. Failure to submit the Request for Waiver with the offer will cause the offer to be rejected as nonconforming to the solicitation.
2. DBE Unavailability Certificate Forms (Exhibit E) are to be used if the DBE contacted responded to the prime Respondent and stated that it was unavailable for a specific reason. These forms, if applicable, shall be submitted with the Request for a Waiver (Exhibit D) of the goal.

- D. The MDAD's Minority Affairs office will assist Respondents by identifying FL UCP certified DBE firms. Upon request, a directory of Local DBE firms will be provided for information only. The MDAD does not warrant or guarantee the performance capability of any firms listed therein. The Minority Affairs office may be contacted at (305) 876-7221, or at the following e-mail address: mcollins@miami-airport.com.

05 PREAWARD SUBSTITUTIONS

The MDAD expects contractors to achieve DBE participation using the firm(s) specified on the Contract Participation Form (Exhibit B). On occasion it may be necessary to substitute other firms to achieve the DBE participation. No substitution

may occur without the MDAD's prior written approval. The MDAD will approve a proposed substitution if it determines that the Respondent has acted in good faith in attempting to meet the DBE participation achievement and if the MDAD concurs that the substitution is necessary. The following are some examples of when substitution may be necessary:

- A. Failure to qualify as a DBE, if the firm was proposed in good faith by the Respondent.
- B. Death or physical disability, if the named DBE prime contractor, DBE subcontractor, or DBE partner(s) of the joint venture is an individual.
- C. Dissolution, if a corporation or partnership.
- D. Bankruptcy.
- E. Inability to furnish the required performance and payment bond.
- F. Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- G. Failure or refusal to execute the subcontract in accordance with the terms of an offer negotiated with the Contractor, but only where the Contracting Officer 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 successful Respondent obtained an enforceable commitment from the subcontractor involved.
- H. Failure to comply with the terms and conditions of its subcontract agreement.
- I. Voluntary decision by the DBE to not participate on the project prior to signing the DBE Utilization Form (Exhibit A).
- J. The MDAD determines that a named DBE is unlikely to perform a commercially useful function or is unable to perform work of the nature and scope claimed for it and the MDAD finds that the Respondent acted in good faith with respect to its decision to propose that DBE.

06 POST-AWARD COMPLIANCE

- A. Compliance Reviews
 - 1. The MDAD may conduct post-award compliance reviews to ensure that the named DBEs on the original or, as a result of contract modification, amended Contract Participation Form (Exhibit B), submitted to and accepted by the MDAD, perform the work as assigned, and at least at the agreed price that was identified on Exhibit B. Specifically, compliance reviews verify: (1) the participation of those DBE subcontractors identified on Exhibit B; (2) the scope of work for

each DBE listed on Exhibit B; and, (3) at least at the agreed price identified for each DBE listed on Exhibit B. The MDAD may use the Monthly Utilization Form (Exhibit F), Project Site Review (Exhibit H), Affidavit of DBE Subcontractor Payment (Exhibit G) or other appropriate information, to verify the participation of each DBE subcontractor identified on Exhibit B, as submitted by the prime contractor. Delineated on these forms will be the activities of all first tier subcontractors, for the purpose of monitoring the progress of all phases of the contract. The Monthly Utilization Form will be submitted by the prime contractor with every invoice submitted.

2. The MDAD is committed to equitable treatment and meaningful utilization of, and timely payment and return of retainage to, DBE subcontractors. All Respondents are advised that the contract resulting from this solicitation will include the subcontractor payments and return of retainage clause that reflects the Regulatory prompt payment time period.
- B. By accepting this contract, the Contractor agrees to the following requirements:
1. The Contractor shall prompt with reasonable measures all DBE firms participating in this contract to renew their DBE certifications and to notify the MDAD immediately of any change in status that would affect their eligibility for DBE certification.
 2. The Contractor shall submit a revised Contract Participation Form and Revised Letter(s) of Intent, or other documentation acceptable to the MDAD, which reflects changes in the DBE participation associated with the modifications to the contract within three days of the Compliance Monitoring officer's request.
 3. The Contractor shall submit a completed Monthly Utilization Form (Exhibit F) with each monthly invoice. Delineated on each Exhibit F will be the activities of all first tier subcontractors, for the purpose of monitoring the progress of all phases of the contract. The Contractor is responsible for the accuracy of all information reported. Lack of inclusion of a completed Exhibit F with each monthly invoice may result in delay in payment.
 4. The Contractor shall allow the MDAD access to records relating to the contract, including but not limited to, subcontracts, payroll records, tax information and accounting records, for the purpose of ascertaining whether the DBEs are performing the scheduled subcontract work and the Contractor is otherwise in compliance with the contract's DBE participation goals.
 5. The Contractor shall maintain DBE subcontractor records of all DBE subcontracting activities. These records shall include current DBE

subcontractor logs, the MDAD's Monthly Utilization Form (Exhibit F) and evidence of payments to DBE subcontractors, including but not limited to, copies of canceled checks and paid invoices. These records must evidence compliance with the terms of the contract. Copies of these records will be available to the Contractor Officer or the MDAD MA Compliance Officer to review upon request. The Contractor shall document any changes in the DBE contract resulting from increases or decreases in contract value due to contract modifications or other changes, new DBE subcontracts, completion of existing DBE contracts or approved substitution of a DBE subcontractor.

6. The Contractor shall maintain a detailed record of every non-compliance issue and corrective action taken. Examples of non-compliance issues are found below in SP (06)(C).
- C. The Contractor shall be found to be in non-compliance if the Contractor fails to fulfill the DBE participation commitment contained in the Contract Participation Form (Exhibit B) and DBE Utilization Form (Exhibit A). The following are examples of non-compliance:
1. The terms of a subcontract with a DBE do not agree with the Contract Participation Form and/or DBE Utilization Form.
 2. A firm other than the DBE listed on the Contract Participation Form (Exhibit B) is performing the subcontract work listed on Exhibit B, unless the substitution was authorized by the MDAD. The Monthly Utilization Form (Exhibit F) may be used by the MDAD to monitor the activities of DBEs and to identify incidence of non-compliance.
 3. The Contractor is purchasing the supplies or materials when the Contractor has represented to the MDAD that the DBE subcontractor will supply both the labor and supplies or materials for the subcontract.
 4. The Contractor requires the DBE subcontractor to perform additional or different work than was agreed in the DBE Utilization Form (Exhibit A) and the formal contract between the prime contractor and the DBE subcontractor, without additional compensation, and without filing a Revised DBE Utilization Form (Exhibit A) with the MDAD.
 5. The Contractor is paying the DBE subcontractor less than the agreed price of the subcontract as defined in the DBE Utilization Form (Exhibit A), or in the Revised DBE Utilization Form (Exhibit A) without cause.
 6. The Contractor is not paying the DBE subcontractor in accordance with the payment provisions of their subcontract.

7. The Contractor fails to submit Monthly Utilization Form (Exhibit F) with his/her invoice submittal, and other documents requested for the purpose of conducting a post-award compliance review.
 8. The Contractor's payments to a DBE subcontractor do not meet the DBE dollar commitment made in the Contract Participation Form (Exhibit B).
 9. The Contractor fails to accurately report payments to DBE subcontractor(s) on the Monthly Utilization Form (Exhibit F).
 10. The DBE subcontractor enters into second tier subcontracts without written approval by the MDAD.
 11. The DBE subcontractor is not performing a commercially useful function as defined in SP (07)(F).
- D. If the Contractor is found to be in non-compliance, the MDAD may impose appropriate sanctions, (including, but not limited to, withholding of payments or termination of the contract in accordance with the DEFAULT clause) if corrective action acceptable to the MDAD is not taken within forty-eight (48) hours (or such other time period deemed appropriate by the Monitoring Officer) after notification by the Construction Project Manager and Monitoring Officer.
- E. If a DBE listed on the Contract Participation Form (Exhibit B) is determined not to be performing a commercially useful function and it is determined by the MDAD that a misrepresentation was made by the DBE, the firm's DBE certification may be revoked. In such cases, the Contractor will be required to replace the DBE found to be ineligible with another eligible, certifiable DBE approved by the MDAD that will perform a commercially useful function.
- F. Post Award Substitution: The MDAD may permit the Contractor to make post-award DBE substitutions consistent with the principles established in SP (05) and (06).

Note: Prospective Respondent (s) must submit an executed DBE subcontract agreement as a condition of award of a contract.

07 DEFINITIONS

- A. "Disadvantaged Business Enterprise" (DBE) is defined as a for-profit small business concern that is (1) at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation in which at least 51 percent of the stock of which is owned by one or more such individuals; and (2) whose management and

daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States, and who is—

1. any individual that the FL UCP (or FL UCP certifying member) finds to be a socially and economically disadvantaged individual on a case-by-case basis. Each such individual must submit the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million. To be seen as a small business, a firm must meet SBA size criteria AND have average annual gross receipts not to exceed \$22.41 million.
2. any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged, provided that the individual also submits the Certification of Social and Economic Disadvantage Eligibility and the Personal Net Worth Statement showing that his or her personal net worth does not exceed \$1.32 million.
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "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;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific American," 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, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh; Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - f. Women;

- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- B. The term "subcontractor" for purposes of Special Provision (SP), shall mean an individual or firm with which the Respondent or subcontractor, proposes to enter into an agreement for the performance of work on the site or for the manufacture, fabrication, or supply of equipment or materials or services used in the construction of the project. The term "subcontractor" shall further refer only to first tier subcontractors (unless the contract also permits second tier contracting under extraneous circumstances).
- C. The term "Joint Venture" shall mean an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills, and/or knowledge.
- D. "Affiliates" Business concerns are affiliates of each other when either directly or indirectly, (1) one business concern controls or has the power to control the other, or (2) a third party or parties controls or has the power to control both. In determining whether business concerns are affiliated, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships. The provisions of 13 CFR Part 121 will be used to guide the MDAD in determining whether firms are affiliated.
- E. The MDAD is committed to achieving significant participation of minority and women-owned businesses in its contracting opportunities. To be considered a minority or women-owned business enterprise, the business concern must be at least 51 percent owned and controlled by one or more minority (African American, Hispanic American, Native American, Asian-Indian American, Asian Pacific American) or female individuals. The firm's management and daily business operations must be controlled by one or more of the qualifying individuals who own it.
- F. "Commercially Useful Function"
 1. A DBE is considered to perform a commercially useful function when it:
 - a. 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;
 - b. is responsible, with respect to materials and supplies used on the contract, for negotiating price, ordering materials, and installing (where applicable) and paying for the material itself; and

- c. when the amount of work performed, when compared to industry practices, is commensurate with the amount the DBE is to be paid under the contract and the DBE credit claimed for its performance of the work. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total value of its contract with its own work force, or 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 involved, it may be presumed that the DBE is not performing a commercially useful function.
2. The following factors should be used in determining whether a DBE trucking company is performing a commercially useful function:
 - a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. If the DBE leases additional trucks, said lease agreements must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased trucks from working for others during the term 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.

INSERT EXHIBITS A – G HERE

DBE BID FORMS

EXHIBIT A - DBE UTILIZATION FORM

EXHIBIT B - DBE CONTRACT PARTICIPATION FORM

EXHIBIT C - BIDDER'S LIST

EXHIBIT D - REQUEST FOR WAIVER (If needed)

EXHIBIT E - DBE UNAVAILABILITY CERTIFICATION (If needed)

DBE POST-AWARD FORMS

EXHIBIT F - DBE MONTHLY UTILIZATION FORM

EXHIBIT G - AFFIDAVIT OF DBE SUBCONTRACTOR PAYMENT

EXHIBIT H - PROJECT SITE REVIEW



EXHIBIT A

DBE Utilization Form
Forms 1 & 2 Demonstration of Good Faith Efforts

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space).

- The bidder/offeror is committed to a minimum of _____% DBE utilization in this Contract.
- The bidder/offeror (if unable to meet the DBE goal of _____% is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts. Actions constituting evidence of good faith efforts are described in Appendix A to 49 CFR Part 26, Section 26.53 and request for waiver Exhibit D.

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

State Registration No. _____

By: _____ Title: _____
(Signature)

_____ Date: _____
(Print Name)

FORM 2: LETTER OF INTENT

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm: _____

The bidder/offeror is committed to utilizing the above named DBE firm for the work described above. The estimated dollar value of this work is \$_____.

AFFIRMATION:

The above named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By: _____ (Signature) _____ (Title)

If the bidder/offeror does not receive award of the contract, any and all representations in this Letter of Intent and Affirmation shall be null and void. This form may be copied for more subs.



**MIAMI-DADE AVIATION DEPARTMENT (MDAD)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
CONTRACT PARTICIPATION FORM**

Check One: Original Revised Date: _____ Contract No.: _____

Name of Offeror: _____ Project Name: _____

Original Contracted DBE Participation: \$ _____ Original Percent Contracted DBE Participation: _____ %

The Offeror shall submit the Contract Participation Form to the Contracting Officer with the offer. Please attach additional sheets if needed.

LIST ALL FIRST TIER DBE FIRMS PARTICIPATING IN THIS CONTRACT <small>Identify whether firms are S, B, H, SP, MF (see in next column).</small>		TYPE OF FIRM* <small>(see below)</small>	FEDERAL TAX ID (also known as Employer Identification Number) nine digit number.	ADDRESS <small>(Number, Street, City, State, Zip)</small>	DESCRIBE TYPE OF WORK <small>(Electrical, Paving, etc. with notation e.g. "Labor Only", "Material Only", "Complete") Item Number if Applicable, Quantity, Unit Price</small>	AGREED PRICE \$
EX	SAMPLE: Six Sigma Electrical Company	S	44-9999999	4200 N.W. 36 th Street, Miami, FL 33102	Furnish and install electrical work	\$1,000,000.00
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
TOTAL AGREED PRICE MUST EQUAL					TO TOTAL OFFERED PRICE:	

I, _____, a duly authorized representative of _____, certify that the above information is true and correct.
(type or print name) (name of firm)

Signature: _____ Date: _____

TYPE OF FIRM*

S = Subcontractor, B = Broker, Agent, Packager H = Hauler, SP = Stocking Supplier/Distributor, MFG = Manufacturer (for statistical purposes and program analysis.)



BIDDER AND SUBCONTRACTOR'S INFORMATION

Project/Bid No.: _____ Date: _____

In accordance with 49 CFR Part 26.11(c) the Prime Bidder shall complete and submit this form with the Bid. The form shall include the information requested for the Prime Bidder and for all subcontractors quoting on the Project.

Name of Bidder or Subcontractor	Address	DBE Status (Check applicable Box)	Age of firm	Type(s) of Work	Annual Gross Receipts (Check applicable Box)
		<input type="checkbox"/> DBE <input type="checkbox"/> non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 Million <input type="checkbox"/> \$1 Million - \$2 Million <input type="checkbox"/> \$2 Million - \$5 Million <input type="checkbox"/> \$5 Million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 Million <input type="checkbox"/> \$1 Million - \$2 Million <input type="checkbox"/> \$2 Million - \$5 Million <input type="checkbox"/> \$5 Million and above
		<input type="checkbox"/> DBE <input type="checkbox"/> non-DBE			<input type="checkbox"/> Less than \$500,000 <input type="checkbox"/> \$500,000 - \$1 Million <input type="checkbox"/> \$1 Million - \$2 Million <input type="checkbox"/> \$2 Million - \$5 Million <input type="checkbox"/> \$5 Million and above

- Attach additional sheets as necessary



DBE GOAL WAIVER REQUEST FORM PROCEDURE

This procedure must be followed if a proposer/offeror cannot meet the DBE subcontracting requirement in part. The Request for Waiver must be submitted in writing with the proposal. The Request for Waiver must report and document the efforts made by the offeror to solicit DBEs for participation and clearly outline the offeror's reasons why no subcontracting opportunities exist. A waiver request must also demonstrate that there is an insufficient number of DBEs to provide adequate competition and reasonable prices. The provisions of the solicitation document must be reviewed by the offeror before submitting a request for a waiver.

A blanket statement that there are no DBE businesses to provide services or materials related to the proposal is **inadequate**. An explanation of how that conclusion was reached must be provided or the request will be determined to be pro forma and not in good faith.

Actions which may demonstrate a good faith effort on the part of the bidder include, but are not limited to the following:

1. Soliciting through all reasonable and available means (e.g. attendance at preproposal meetings scheduled by the authority, advertising and/or written notices in major circulation newspapers such as the local trade association publications, and disadvantaged and minority and women oriented media) the interest of all certified DBEs who have the capacity to perform the work of the contract. The offeror 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 goals 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 number of DBEs that were considered: a) a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and, b) evidence as to why additional agreements could not be reached for DBEs to perform the work.
5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the MDAD or the offeror.
6. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
7. Negotiate in good faith with interested DBEs, and not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

REQUEST FOR WAIVER

_____ hereby requests a waiver of the required contract goals for the participation of DBEs as specified in solicitation number _____. All good faith efforts to identify potential DBEs as subcontractors have been made but we have been unable to obtain the required goals for the following reason(s):

(Authorized Representative)

(Date)

NOTE: All advertisements, telephone conversations and other documentation to support this statement should be attached.

EXHIBIT E



DBE UNAVAILABILITY CERTIFICATION

I, _____ of
(Name) (Title)

(Offeror) (Date)

I contacted the following DBEs to obtain a quote for work items to be performed on Contract Number _____

<u>DBE (Name of Firm)</u>	<u>Work Items Sought</u>
_____	_____
_____	_____

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

(Signature)

(Date)

_____ was offered an opportunity to bid or make an offer on
(Name of DBE)
the above identified work on _____, by _____
(Date) (Source)

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

(Signature of DBE)

(Title)

EXHIBIT G



**Miami-Dade Aviation Department
 Disadvantaged Business Enterprise (DBE) Program
 Affidavit of DBE Subcontractor Payment**

The Code of Federal Regulations 49, 26.37(b), requires the Miami-Dade Aviation Department (MDAD) to monitor and verify that work subcontracted to Disadvantaged Business Enterprise (DBE) firms is actually performed by the DBEs. Additionally, MDAD is required to report the DBE participation on each project. Therefore, it is MDAD's responsibility to discern whether payments are made to DBE firms. The following affidavit is to be completed and signed by the contractor within 15 days of the completion of the project. The affidavit seeks to verify actual payments made to DBE firms on the project. Each DBE firm must verify the actual payment amount.

Payment Period: _____ Project No. _____

- ▶ **Interim** Interim affidavits must be submitted for each DBE firm at the end of each fiscal year for multi-year projects.
- ▶ **Final** Final affidavits for each DBE firm must be submitted within 15 days of the completion of the project.

Prime Company Name _____

DBE Sub-Subcontractor _____ **Payment** _____
 All amounts indicated must be cumulative

By signing below, the noted firms agree that the payment amounts recorded above are true and accurate as of the payment time period noted above. Furthermore, by signing, the noted firms attest to the fact that the DBE listed above has performed a "commercially useful function" and abided by all other requirements of the DBE Program as defined in Title 49 of the United States Code of Federal Regulations Part 26.

<p>_____</p> <p>Prime's Signature/Title</p> <p>NOTE: This affidavit must be notarized.</p> <p>Sworn or affirmed and subscribed before me this _____ day of _____ 20 _____</p> <p>Notary Signature _____</p>

<p>_____</p> <p>DBE Sub-subcontractor Signature/Title</p> <p>NOTE: This affidavit must be notarized</p> <p>Sworn or affirmed and subscribed before me this _____ day of _____ 20 _____</p> <p>Notary Signature _____</p>
--



**COMMERCIALLY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW**

Per 49 CFR 26.55, "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. A DBE does not perform a CUF 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..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

Minority Affairs field staff will perform CUF reviews on DBE subcontractors and Material Suppliers. Perform a minimum of one review for each DBE for each project with DBE goal. The review should be conducted when the DBE first begins work. Monitor compliance through the course of the project.

Project Name:	MDAD Reviewer:
Project No:	Reviewer Title:
Prime Contractor:	Review Date:

DBE Name:

DBE is performing as: The Prime Contractor A Subcontractor Another Tier Subcontractor
 Or Material Supplier: Manufacturer Regular Dealer Broker

Provide a brief description of the DBE's scope of work. (obtain copy of Subcontract Agreement and/or Purchase Order if needed.)

	Yes	No
COMMENSURATE: Is payment received by the DBE commensurate with the work being performed?	<input type="checkbox"/>	<input type="checkbox"/>
PERFORMING: Does the DBE have employees on the job to perform the work? Does the DBE employee (s) only work for the DBE? Is the DBE working without assistance from the prime contractor or another subcontractor? <small>(Use of primes' equipment in an emergency is allowed but the cost associated with the use of the equipment cannot be credited towards the goal.)</small> Is the DBE only using equipment it owns, rents, or leases? <small>(Attached equipment list and all ownership documents and rental/lease agreements.)</small> Is the DBE performing at least 30% of their work?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
Hauling: Does the DBE hauling firm own or lease their trucks? (If so, obtain verification of ownership or lease documents in the name of the DBE.) Does the DBE employ drivers for trucks owned by the company? (If leased trucks include operators, this should be indicated in the agreement.) Does a review of the haul tickets associated with the project indicate that hauling is being performed by the DBE?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
MATERIALS: Does the DBE's name appear on all invoices, haul tickets, and/or bills of lading? If joint checks are used, has the DBE Coordinator approved? Are joint checks signed by the DBE? (Obtain canceled check copies.)	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
SUPERVISING: Is the DBE supervising its employees and their work? Is the supervisor a full-time employee of the DBE?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
CUF: Does the DBE appear to be performing a Commercially Useful Function (CUF)? (If no, provide comments.)	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS:

CUF DETERMINANTS

If any Red Flag Conditions are identified, contact Minority Affairs Office

PERFORMING

- DBE must be responsible for performing its own work on the project
- At least 30% of the work must be performed by the DBE with its own workforce
- The DBE keeps a regular workforce and has its own employees
- The DBE is utilizing its own equipment
- Operation of the equipment must be subject to the full control of the DBE

RED FLAGS

- A portion of the DBE's work being done by the Prime Contractor or jointly with another contractor
- Employee working for both the Prime and the DBE
- Equipment used by DBE belongs to the Prime Contractor or another contractor with no formal lease agreement
- Equipment signs and markings cover another contractor's identity

RECORDS/DOCUMENTS

- Subcontract Agreement or Purchase Order
- Equipment ownership, rental, or lease documents
- Certified payrolls

MATERIALS (For material credit)

- DBE is responsible for the delivery of the materials
- DBE is ordering the material and invoices indicate that DBE is the customer
- Material invoices indicate that DBE owner or Superintendent is the contact person
- A/E has approved use of joint checks

RED FLAGS

- Materials for DBE credited work are delivered by the Prime Contractor
- Materials are ordered, billed to, and/or paid by the Prime Contractor
- Invoices do not indicate that DBE is the customer
- Prime's employee is listed as the contact person on invoices
- Materials come from Prime's stockpiles

RECORDS/DOCUMENTS

- Invoices
- Haul tickets or Bills of Lading
- Material on Hand documentation
- Joint check agreement
- Cancelled checks

SUPERVISING

- DBE supervisor is a full-time employee of the DBE
- Employees are being supervised by DBE supervisor
- DBE is scheduling work operations

RED FLAGS

- DBE's employees are being supervised by Prime Contractor or another contractor
- DBE provides little or no supervision of work
- DBE supervisor is not a full-time employee of the DBE

RECORDS/DOCUMENTS

- Certified Payrolls
- Document communication with DBE owner or Superintendent