

January 1, 2023

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| APPROVED:<br>Division Administrator<br><br>By: _____<br>FEDERAL HIGHWAY ADMINISTRATION |
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## DISADVANTAGED BUSINESS ENTERPRISE (DBE)

It is the policy of the South Carolina Department of Transportation (SCDOT) to ensure non-discrimination in the award and administration of federally assisted contracts and to use Disadvantaged Business Enterprises (DBEs) (all references to "DBE" herein shall mean "South Carolina certified DBE") in all types of contracting and procurement activities according to State and Federal laws. To that end the SCDOT has established a DBE program in accordance with regulations of the United States Department of Transportation (USDOT) found in 49 CFR Part 26.

This document, known as the "DBE Supplemental Specifications" includes three main parts:

- Part A. Instructions to Bidders – Pre-award Requirements
- Part B. Instructions to Contractors – Post Award
  - 1) Bid-Build/LPA Process
  - 2) Alternate Delivery Process

### **PART A. INSTRUCTIONS TO BIDDERS – PRE- AWARD REQUIREMENTS**

When incorporated into Alternative Delivery and/or Local Public Agency procurements, the terms "bid," "bidder" and "bid letting" shall mean "proposal," "proposer" and "proposal opening." The title Director of Construction shall mean Director of Alternative Delivery.

#### **1. DBE CONTRACT GOAL**

- A. The DBE participation goal for this contract is set forth in the DBE Special Provisions.
- B. The successful bidder shall exercise all necessary and reasonable steps to ensure that DBE firms perform services or provide materials on this contract in an amount that meets or exceeds the DBE contract goal and commitment. Submitting the bid, including electronically, shall constitute an agreement by the bidder that it will meet or exceed the DBE contract goal and commitment or make good faith efforts to show that it could not meet the goal or commitment, if awarded the contract. Failure to meet the contract goal or make good faith efforts to meet the contract goal, will result in the bid being considered irregular and rejected, subject to section 3.E., resulting in the contract being awarded to the next lowest responsible and responsive bidder.
- C. When a surety company assumes control over a project (including hiring another prime Contractor), in whole or in part, the provisions within this DBE Supplemental Specification applies.

#### **2. DBE COMMITTAL**

- A. Each bidder shall enter all required information regarding how it intends to meet the DBE goal in the electronic bid folder found on the electronic bidding service website, *Bid Express*, entitled "DBE List." See paragraph D (below) for non-electronic bid submissions. The listing of DBE(s) shall constitute a commitment by the bidder to utilize the listed DBE(s), subject to the replacement requirement set forth below in Section 2 of Part B. A DBE listed on the DBE List or DBE Committal Sheet hereinafter shall be referred to as a "committed DBE."
- B. In meeting the DBE contract goal, the bidder shall use only certified DBEs listed in the most recent "South Carolina Unified Certification Program DBE Directory" (hereinafter referred to as the "Unified DBE Directory") accessible online at <http://dbw.scdot.org/dbesearch/DirectoryQuery.aspx> and available on the day of bid submission. Only DBE firms listed in the DBE directory at the time of bid submission, may be used to meet the project DBE goal. The DBE.BIN file used for the electronic bidding contains the names of the certified DBEs listed in the "Unified DBE Directory." For more information on the use of the DBE.BIN file in electronic bidding, see Section 6 below.

C. The failure by a bidder to provide all information required in the electronic bid or DBE Committal Sheet will make the bid irregular and it will be rejected. SCDOT will then award the contract to the next lowest responsible and responsive bidder. SCDOT may, within its sole discretion, allow a bidder to correct minor deficiencies and errors (mis-spellings, transposed numbers, etc.) as set forth in section 3A below.

D. The DBE.BIN file listed must be downloaded for each particular letting because the "Unified DBE Directory" is frequently updated to add and remove companies. ALL DBE data such as Name, Company ID, and Address must be selected from drop-down lists provided by the DBE. BIN file. If the DBE.BIN file is not downloaded, no data for the drop-down lists will be available. For non-electronic bidding in Alternative Delivery or Local Public Agency procurements, use the attached DBE Committal Sheet, in lieu of the DBE.BIN file.

The following information must be selected or entered in the electronic bid:

- (1) The names and addresses of certified DBEs whose services or materials will be used in the contract.
- (2) Work Type and Work Code selected from a drop-down list. When one of these is selected, the other will automatically be filled in. **[Note: Only select the Work Type and Work Code for which the selected DBE firm has been certified to perform].**
- (3) An Item of work, approximate Quantity of work to be performed or materials to be supplied, Unit (of measurement), Unit Price, and the extended dollar amount of participation by each DBE listed.
  - (a) **Item:** The Item is the bid item with which the DBE will be associated and must be selected from the Schedule of Bid Items found in the drop-down list. If the proposed work is for only a portion of an Item of work (i.e., hauling of materials, tying of reinforced steel, etc.) an adequate description of this work shall be included in the note block.
  - (b) **Quantity, Unit, & Unit Price:** Initially when an Item is selected, the contract quantity, unit, and the bidder's unit price and extension will appear. If the proposed work is for only a portion of an item as described in (1) above, then the Quantity, Unit Price and /or Extension shall be changed to reflect the actual amount of work committed to the DBE. The Unit (of measurement) cannot be changed.
- (4) The bidder must also submit a copy of a signed statement or quote from each of the DBEs listed in the DBE List folder of the electronic bid or DBE committal sheet. The signed statements or quotes should verify the items, quantities, units, unit prices, and dollar values listed in the DBE List folder of the electronic bid or DBE committal sheet. COPIES OF THE SIGNED STATEMENTS MUST BE SUBMITTED TO SCDOT CONTRACT ADMINISTRATION OFFICE WITHIN FOUR (4) BUSINESS DAYS OF THE BID LETTING, from the apparent low bidder. Should the apparent low bid be rejected for failing to meet the goal, the next apparent low bidder will have three (3) business days from notification, to submit the signed quotes. SCDOT will accept facsimiles of the verified statements with the caveat that the bidder must furnish the original document to SCDOT upon request. Signed quotes must be on the DBEs' letterhead and contain the following information: date, printed name, address, and phone number of the authorized individual providing the quote, project name and identification number; quote needs to be addressed to Contractor from DBE, and identify specific services being performed and/or material being supplied.
- (5) **Watering and repair of silt fence will not be allowed as part of a commitment, but must be reported if performed by a DBE.**

### **3. GOOD FAITH EFFORTS REQUIREMENTS**

A. **Requirements for Submission for Approval of a Good Faith Effort.** A bidder that cannot meet the DBE contract goal through DBE committals submitted with the bid, must request in writing (faxes and emails are acceptable) a good faith effort review by SCDOT, no later than 5:00 pm of the next business day following the letting. Bidder must submit evidence to support its claim of conducting a good faith

effort to meet the contract DBE goal. **THIS SUPPORTING DOCUMENTATION MUST BE FURNISHED TO SCDOT CONTRACT ADMINISTRATION OFFICE (LOCAL CONTRACT ADMINISTRATOR FOR LPAs) IN WRITING WITHIN THREE (3) BUSINESS DAYS OF THE BID LETTING.** One complete set of this information must be received by Contract Administration no later than 12:00 noon of the third business day following the bid letting. It will be acceptable to submit a single sample representative letter along with the list of the firms being solicited instead of submitting repetitious solicitation letters. The documented efforts listed in item (C.) below are some of the items SCDOT will consider in evaluating the bidder's good faith efforts. The documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documents.

B. Failure to Submit Required Material. If the bidder fails to provide this information by the deadline, the bid is considered irregular and can be rejected,

C. Evaluation of a Good Faith Effort. SCDOT may consider the following factors in judging whether or not the bidder made adequate and acceptable good faith efforts, to meet the DBE contract goal:

- (1) Did the bidder contact SCDOT for assistance in meeting the goal?
- (2) Did the bidder attend any pre-bid meetings that were scheduled by SCDOT or Local Public Agency to inform DBEs of subcontracting opportunities?
- (3) Did the bidder provide solicitations through all reasonable and available means (e.g., post a request for quotes from DBE subcontractors on SCDOT Construction Extranet webpage; attend at pre-bid meetings, advertise and/or written notices at least 10 days prior to the letting; or show the bidder provided written notice to all DBEs listed in the "Unified DBE Directory" that specialize in the areas of work in which the bidder will be subcontracting)? Solely emailing DBEs without a response is not considered a Good Faith Effort.
- (4) Did the bidder follow-up initial solicitations of interest by contacting DBEs, to determine with certainty whether they were interested or not? If a reasonable amount of DBEs in the area of work do not provide an intent to quote, did the bidder contact the Division of Minority & Small Business Affairs for assistance?
- (5) Did the bidder select portions of the work to be performed by DBEs, in order to increase the likelihood of meeting the contract goal? This includes, where appropriate, breaking out contract items of work into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these items of work with its own personnel.
- (6) Did the bidder provide interested DBEs with adequate and timely information about the plans, specifications, and requirements of the contract?
- (7) Did the bidder negotiate in good faith with interested DBEs, or reject them as unqualified without sound reasons based on a thorough investigation of their capabilities? Any rejection should be noted in writing with a description as to why an agreement could not be reached. The fact that the bidder has the ability or desire to perform the work with its own personnel will not be considered as sound reason for rejecting a DBEs quote.
- (8) Was a quote received from an interested DBE, but rejected as unacceptable because it was not the lowest quote received? The fact that the DBE firm's quotation is not the lowest quotation received will not in and of itself be considered a sound reason for rejecting the quotation as unacceptable, as long as the quote is not unreasonable.
- (9) Did the bidder specifically negotiate with non-DBE subcontractors/partners to assist with meeting the overall DBE project goal?
- (10) Did other bidders meet the overall project DBE goal?
- (11) Any other evidence that the bidder submits which demonstrates that the bidder has made reasonable good faith efforts, to include DBE participation.

D. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy DBE contract goals. Commitments to suppliers/dealers count at 60% of the quote. If the bidder miscalculates using 100% of the supplier's quote, the bidder may make the appropriate adjustment to reflect 60%. However, the bid will be rejected if the adjustment drops the commitments below the DBE goal.

E. If the required documents submitted are complete but contains minor errors, SCDOT may, within its sole discretion, give the bidder an opportunity to cure any minor deficiencies resulting from an informality or irregularity in the DBE commitment or waive any such deficiency when it is in the best interest of the State. A minor informality or irregularity is one which is merely a matter of form, scrivener's error or is some immaterial variation from the exact requirements of the invitation for bids having no effect or merely a trivial or negligible effect on DBE contract goal, quality, quantity, or delivery of the supplies or performance of the contract, and the correct or waiver of which would not be prejudicial to bidders.

#### **4. GFE DETERMINATION AND RECONSIDERATION PROCEDURES**

A. After the letting, SCDOT will determine whether the low bidder has met the DBE participation contract goal or made good faith efforts to attempt to meet the goal. SCDOT will notify the apparent low bidder of its determination by email and also by either US Mail or hand-delivery, if SCDOT determines the apparent low bidder failed to meet the goal, did not demonstrate a good faith effort to meet the goal, or meet the requirements of a commercially useful function. The apparent low bidder may request a reconsideration of this determination.

B. The bidder must make a request for reconsideration in writing within three (3) business days of receipt of the determination via email. The bidder must provide written documentation to SCDOT's Director of Construction, supporting its position within six (6) business days of receipt of SCDOT's adverse determination. Only documentation dated before three (3) business days of the bid letting may be used in support of its position that it could not meet the goal. No DBE good faith efforts performed after the bid opening will be allowed as evidence. The determination shall be final, if the bidder fails to request a reconsideration within three (3) business days.

C. To reconsider the bidder's DBE commitment or good faith efforts, the Deputy Secretary for Engineering will designate a panel of three (3) SCDOT employees, who did not take part in the original determination, comprised of: (1) one employee from the District Construction Engineer's (DCE) Office, (2) one employee from the MSBA, and (3) one employee at large (hereinafter referred to as the "Reconsideration Panel"). The DCE Office representative will be appointed chairman of the Reconsideration Panel. A representative from FHWA may be a non-voting member of the Reconsideration Panel. The Reconsideration Panel will contact the bidder and schedule a meeting. The Reconsideration Panel will make reasonable efforts to accommodate the bidder's schedule; however, if the bidder is unavailable or not prepared for a hearing within ten (10) business days of receipt of SCDOT's original written determination, the bidder's reconsideration rights will be considered to have been waived.

D. The meeting will be held at SCDOT Headquarters Building, 955 Park Street, Columbia, South Carolina or via video-conferencing software such as Webex, Zoom or Microsoft Teams, as may be determined by SCDOT. The bidder will be allowed up to two (2) hours to present written or oral evidence supporting its position. The bidder's presentation shall be made by an employee of bidder. Legal counsel may be present for the reconsideration, but may not actively participate. Bidder shall provide the panel with at least one business day's notice of its intent to bring legal counsel.

E. The Reconsideration Panel will issue a written report and recommendation to the Deputy Secretary for Engineering or his designee. The Deputy Secretary for Engineering or his designee will review all information supporting the recommendation. SCDOT shall not award the contract until the Deputy Secretary for Engineering issues a decision or the bidder waives its reconsideration right, either through failure to request reconsideration or failure to be available for the meeting. The Deputy Secretary for Engineering will notify the bidder of the final decision in writing and send the final decision to the DOC to either notify the bidder of award barring any other issues, or notifying the next lowest responsible and responsive bidder.

## **5. CONSEQUENCES OF FAILURE TO COMPLY WITH DBE PROVISIONS**

A. Failure on the part of the bidder to meet the DBE contract goal or to demonstrate good faith efforts to meet the DBE contract goal, will result in the bid being declared irregular and may be rejected. Upon rejection, the award may be made to the next lowest responsible and responsive bidder.

B. After bid letting, but prior to award, SCDOT reserves the right to cancel the project, or any or all bids or proposals may be rejected in whole or part, when it is in the best interest of the State.

## **6. DIRECTORY OF SOUTH CAROLINA CERTIFIED DISADVANTAGED BUSINESS ENTERPRISES**

A. The electronic DBE.BIN file found on the electronic bidding service website, *Bid Express*, contains data from the "Unified DBE Directory" approved for use in each particular letting. **The file must be downloaded for each letting because the directory is routinely updated.** The bidder is advised that this directory pertains only to DBE certification and not to qualifications. It is the bidder's responsibility to determine the actual capabilities and/or limitations of the certified DBE firms. For non-electronic bid submissions, the directory can be found at: <https://www.scdot.org/business/business-development-dbe-sbe-cert.aspx>.

B. In meeting the DBE participation contract goal, the bidder shall use only DBEs that are included in the "Unified DBE Directory" contained in the DBE.BIN file, or on-line, current for the month the bid is submitted. The bidder may only count toward the DBE goal work in the areas for which the DBE has been certified, unless prior written approval from SCDOT is obtained. The bidder and the DBE must jointly apply to SCDOT's Director of Construction for approval of work, in an area of work other than that, in which the DBE has been certified. The requested work must be in an area related to the area of work in which the DBE has been certified. Such requests must be submitted in writing to the Director of Construction no later than ten (10) business days prior to the date of the letting. The Director of Construction has the right to approve or disapprove the request. The Director of Construction will give the bidder and the DBE written notice of his/her decision, no later than five (5) business days prior to the date on which bids are received. If approved, a copy of the written approval must accompany the submission of the subcontractor's quote.

C. Certification of a DBE for work in a certain area of work or approval to perform work in a related area shall not constitute a guarantee that the DBE will successfully perform the work or that the work will be performed completely. Such certification or approval shall only imply that the successful completion of the work by the DBE, can count toward satisfying the DBE contract goal in accordance with the counting rules set forth in 49 CFR Part 26 (see Section 3 of Part B below.)

D. The bidder may print a copy of the "Unified DBE Directory" from SCDOT web page (6 A. above.)

## **7. ADDITIONAL DBE PARTICIPATION**

The bidder is strongly encouraged to exceed the DBE Goal and obtain the maximum amount of DBE participation feasible on the contract. Any DBE participation in excess of the DBE contract goal shall also be included in the DBE Quarterly Reports.

## **8. CONTRACTOR'S RESPONSIBILITY TO REPORT BIDDER INFORMATION**

The bidder should keep a list of all subcontractors (DBE or non-DBE) who bid or quoted for subcontracts on this project. As a condition to prequalification or renewal of prequalification, Contractors must submit the names and addresses of all firms (DBE and non-DBE), who quoted the Contractor for subcontracts on SCDOT projects throughout the course of the previous year.

**9. BOND SURETY**

When a bond surety assumes responsibility of a project in whole, or in part, the provisions of this DBE Supplemental Specifications applies to the bond surety and any Contractor used to complete this project.

## **PART B (1) INSTRUCTIONS TO CONTRACTORS – POST-AWARD**

### **REQUIREMENTS – Bid-Build/LPA**

#### **1. CONTRACTOR'S OBLIGATIONS**

A. 49 CFR 26. The Contractor shall carry out the applicable requirements of 49 CFR Part 26 and these DBE Supplemental Specifications in the award and administration of this contract. The requirements of 49 CFR Part 26 and these DBE Supplemental Specifications are an essential part of this contract. The failure by the Contractor to carry out these requirements or any provision of the DBE regulations and specifications is a material breach of the contract, and may result in the termination of the contract or such other remedy, as SCDOT in its sole discretion, deems appropriate.

B. Meeting both the Goal and Commitment or Making Good Faith Efforts to Meet the Goal and Commitment. It is the Contractor's responsibility to meet or make good faith efforts to meet the DBE contract goal and commitments. Compliance with the DBE contract goals and commitments shall be assessed by SCDOT on a monthly basis. Failure to meet the goal or commitments to the specific DBEs listed on the committal sheet or to demonstrate good faith efforts to meet the goal or commitments, may result in any one or more of the following sanctions:

- (1) Withholding monthly progress payments until Contractor complies with the DBE contract goals and commitments;
- (2) Imposition of liquidated damages;
- (3) Declaring the Contractor in default pursuant to Section 108.10 of the Standard Specifications and terminating the contract;
- (4) Assessing sanctions in the amount of the difference in the DBE contract committal and the actual payments made to each certified DBE;
- (5) Disqualifying the Contractor from bidding pursuant to Regulation 63-306, Volume 25A, of the S. C. Code of Laws.

Sanctions may be imposed at any time. When a Contractor replaces a committed DBE or self performs work committed to a DBE firm without DOC approval, sanctions are to be imposed at the time of the violation and cannot be made up unless the affected DBE is provided additional work equal to the commitment. When approved by the DOC, the Contractor may make-up of the loss of the DBE commitment, at any time during the life of the project. The District Construction Engineer will decide when to impose sanctions.

C. Using the DBEs shown on the Committal Sheet to Perform the Work. The Contractor must utilize the specific DBE firm(s) listed on the "DBE Committal Sheet" to perform the work and supply the materials for which each is listed. However, the Contractor may seek approval from the Director of Construction to perform the work with other personnel or obtain the materials from other sources, as set forth in Section 3 below. The Contractor shall not be entitled to any payment for such work or material, unless it is performed or supplied by the listed DBE or, with prior written approval of the Director of Construction, by other personnel (including those of the Contractor). Failure to meet a commitment to a specific DBE may result in sanctions listed in Section 1(B) above, unless prior written approval is obtained for replacement of the committed DBE from the Director of Construction or his/her designee.

When SCDOT makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor will not be required to seek additional participation. When SCDOT makes changes that result in additional work to be performed by a DBE based upon the Contractor's commitment, the DBE shall participate in additional work, to the same extent as the DBE participated in the original work.

Once a DBE firm is committed, the Contractor shall ensure committed DBE firms are utilized to the fullest extent possible. If it appears the committed DBE(s) will fall short of the commitment, the Contractor must provide every opportunity for the committed DBE(s), to perform in meeting the original commitment made to the DBE firm. Additional work added to the project, e.g., hauling additional materials, building additional structures, etc., that is outside the original committal and within the DBE

firms' approved area of work will be considered. Failure to do so may affect a determination of good faith efforts.

D. Incorporating DBE Supplemental Provisions in Subcontracts. The Contractor shall make available, at the request of SCDOT, a copy of all DBE subcontracts. The Contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials, require that the subcontract and all lower tier subcontracts be performed in accordance with these DBE Supplemental Specifications.

The Contractor is required to insert the following provision in each subcontract or agreement with a DBE goal:

1. This contract or agreement shall be performed in accordance with the requirements of the most recently adopted SCDOT DBE Supplemental Specifications, in effect on the date of contract solicitation.
2. This contract and all subcontracts shall be performed in accordance with the requirements of the most recently adopted SCDOT Prompt Payment Clause Supplemental Specifications, in effect on the date of contract solicitation.
3. No Contractor (prime, sub, or sub-subcontractor) may withhold or delay payment to any party unless there is good cause and only with prior written approval by SCDOT. The request to withhold or delay payment must be submitted to SCDOT in writing.
4. Defines "satisfactorily completed" as when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
5. A Party may not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 and these DBE Supplemental Specifications or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Failure to adhere to this prohibition will result in the Contractor being considered noncompliant with this part.

E. Contractor shall invite all subcontractors (both DBE and Non-DBE) to attend progress meetings at least two weeks prior to the anticipated start of the subcontractors' work.

## **2. Preconstruction/Partnering Conferences**

Contractor is required to invite representatives of all subcontractors to the initial preconstruction/partnering meetings used to "kick-off" construction activities in accordance with SCDOT's 2007 Standard Specifications for Highway Construction, Section 108.2 - Preconstruction Conference.

## **3. REPLACEMENT / AUGMENT / SUPPLEMENT OF COMMITTED DBEs**

A. Requirement for Replacing/Augmenting/Supplementing (Referred as Replace). The following shall apply to replacement of a DBE firm listed on the "DBE Committal Sheet" regardless of circumstance or reason:

- (1) When a DBE listed on the DBE committal sheet (hereafter referred to as a "committed DBE") fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards, the Contractor shall follow the replacement procedures in Section B below. Failure on the part of the Contractor to comply with this requirement shall constitute a breach of contract and may be cause for the imposition of the sanctions set forth in Section 1(B) above.
- (2) When a committed or non-committed DBE is decertified or removed from the SC Unified DBE Directory after signing a valid subcontract agreement with the Contractor:
  - (a) The Contractor **may** continue to utilize the decertified DBE on the contract and receive credit toward the DBE contract goal for the DBE's work unless the



Contractor is implicated in the DBE decertification. However, the Contractor is encouraged to replace the decertified DBE with a certified DBE pursuant (following replacement procedures in Section B below) where feasible, to assist SCDOT in meeting the overall statewide DBE goal.

- (b) If a committed or non-committed DBE is removed from the SC Unified DBE Directory due to graduation from the DBE program, the Contractor may continue to utilize the graduated DBE on the contract and receive credit toward the DBE contract goal for the DBE's work. If Contractor elects to replace a DBE graduate, then the Contractor shall follow replacement procedure in Section B below.
- (3) When a committed DBE is decertified or removed from the SC Unified DBE Directory prior to execution of a valid subcontract agreement with the Contractor, the Contractor shall follow the replacement procedures in Section B below. Failure on the part of the Contractor to comply with this requirement shall constitute a breach of contract and may be cause for the imposition of sanctions set forth in Section B1 (B) above.

B. Replacement Procedures. In order to replace/augment/supplement a *committed* DBE regardless of circumstance or cause, the Contractor must coordinate with MSBA as part of the GFE process and obtain prior written approval from the Director of Construction only. Prior to requesting SCDOT's approval to terminate and/or substitute a committed DBE, the Contractor is to give five (5) business days' notice to the DBE subcontractor in writing (certified mail) with a copy provided to both the Director of Construction and MSBA.

The purpose of this notice is to both inform the DBE subcontractor of the Contractor's intent to request SCDOT's approval to terminate and/or substitute/supplement the committed DBE, as well as to outline the reasons for the request. The DBE subcontractor shall be given five business days from receipt of notice to provide a written response stating either its consent or its reasons why it objects to the proposed termination. On a case by case basis and at SCDOT's sole discretion, a shorter response period than five (5) business days may be allowed as a matter of public necessity. If SCDOT determines a shorter response period is justified, the Contractor and committed DBE will be advised in writing via email.

In no case shall the Contractor's ability to negotiate a more advantageous contract with another subcontractor be considered a valid basis for replacement. If the Contractor obtains the Director of Construction's written approval for the replacement, the Contractor shall replace/supplement the committed DBE with another certified DBE firm or make good faith efforts to do so as set forth in Section 3(A) above. Any DBE who is certified at the time of replacement, may be used as a replacement.

If the Director of Construction does not approve the replacement/supplement, the Contractor shall continue to use the currently *committed* DBE in accordance with the contract unless continued performance is rendered impossible or illegal. The determination of whether the currently committed DBE is available shall be made by the Director of Construction or his/her designee in consultation with MSBA. Failure to do so may constitute cause for imposition of any of the sanctions set forth in Section 1(B) above.

The Contractor may use DBE firms already subcontracted on the project with increased work, that exceeds the amount of work already subcontracted to that DBE.

A committal sheet(s) with the DBE firm's signed quote with a change order must be submitted for the DBE firm identified to replace/augment/supplement a committed DBE.

Approval of a Subcontractor's Request does not constitute or imply DOC's approval to replace/augment/supplement a committed DBE firm. The Subcontractor's Request for committed DBE firms must meet or exceed the amount committed.

- C. Good Faith Efforts Post Award, The Contractor shall provide the Director of Construction with documentation of its good faith efforts to find a replacement. This documentation shall include, but is not limited to the following:
- (1) Copies of written notification to certified DBEs, that their interest is solicited in subcontracting the work defaulted by the previous certified DBE, or in subcontracting other items of work in the contract. A single representative copy of the written notification with a list of DBEs contacted is sufficient to satisfy this requirement.
  - (2) Statement of efforts to negotiate with certified DBEs for specific sub-bids including, at a minimum:
    - (a) Names, addresses and telephone numbers of certified DBEs who were contacted;
    - (b) Description of the information provided to certified DBEs regarding the plans and specifications for portions of the work to be performed;
    - (c) Statement of why additional agreements with certified DBEs were not reached.
  - (3) For each certified DBE contacted, but rejected, the Contractor must state in writing why it rejected each of them.
  - (4) Written confirmation the Contractor contacted SCDOT's Division of Minority & Small Business Affairs for assistance in locating certified DBEs, willing to take over that portion of work or perform other work on the contract.
  - (5) Failure to find a replacement DBE at the original cost, is not in itself evidence of good faith efforts.

The remaining portion of the DBE's work shown on the "DBE Committal Sheet" can be completed by the Contractor's personnel or by a non-DBE subcontractor approved by SCDOT, after SCDOT determines the Contractor demonstrated a good faith effort to replace the committed DBE, with another DBE.

The Contractor will not be required to make up that part of the DBE goal attributable to the portion of work not completed by the committed DBE, and this shortfall in meeting the DBE goal will be waived by SCDOT.

SCDOT may impose sanctions as set forth in Section 1.B (1) above, if the Contractor has not made good faith efforts to replace the committed DBE.

D. Payment from SCDOT.

The Contractor shall not be entitled to payment for work or material committed to a committed DBE unless:

- (1) The work is performed by the *committed* DBE; or
- (2) The work is performed by another certified DBE after the Director of Construction has given approval to replace the committed DBE as provided above; or
- (3) The work is performed by a non-DBE after SCDOT determines that the Contractor has demonstrated good faith efforts to replace the committed DBE as provided above.

### 3. COUNTING CERTIFIED DBE PARTICIPATION TOWARD MEETING THE DBE GOAL

DBE participation shall be measured by the actual, verified payments made to DBEs subject to the following rules. The Contractor is bound by these rules in regard to receiving and reporting credit toward the DBE contract goal. The Contractor shall report on DBE Quarterly Reports only the amounts properly attributable toward the goal under these rules.

#### A. General Counting Rules.

- (1) The entire amount of that portion of a construction contract (or other contract not covered by paragraph A (2) of this section) that is performed by the DBEs own personnel, may be counted toward the goal. 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), can be counted toward the goal.
- (2) The work of a DBE subcontracted to another certified DBE firm may be counted toward the DBE goal. Any work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goal/commitment.
- (3) The Contractor is allowed to count expenditures to a DBE only, if the DBE is certified as a DBE by SCDOT, except as provided in section 3(A) (2) above, in the event a DBE loses eligibility status, after a subcontract is signed.
- (4) The Contractor can count expenditures to a DBE, only after the DBE has actually been paid.

B. Joint Ventures. 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 the DBE performs with its own personnel, can be counted toward DBE goals. A joint venture must be coordinated with the MSBA and approved by the Director of Construction prior to start of the contract.

C. Commercially Useful Function (CUF). A DBE Contractor must perform a commercially useful function to be counted toward the DBE goal/commitment 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 for negotiating materials/supplies price, determining materials/supplies quality and quantity, ordering the material, and installing materials/supplies (where applicable) and paying for the material/supplies itself. SCDOT will evaluate the amount of work subcontracted, industry practices, whether or not 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 to determine whether a DBE is performing a commercially useful function.
- (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) SCDOT will presume that the DBE is not performing a commercially useful function 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 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.
- (4) A DBE may present evidence to rebut the presumption it is not performing a commercially useful function as provided in paragraph (3) of this section. SCDOT may determine that the firm is performing a commercially useful function, given the type of work involved and normal industry practices.

- (5) SCDOT's decisions on commercially useful function matters are subject to review by the Federal Highway Administration, but are not administratively appealable to the USDOT.

D. Special Rules for Trucking Companies. SCDOT will use the following rules to determine whether a DBE trucking company is performing a commercially useful function and what portion of the DBE work can be counted toward DBE goals:

- (1) **DBE must control all work.** The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, to be considered as performing a commercially useful function. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

- (2) **DBE must "own" at least one truck.** The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the project. A DBE will be considered to "own" a truck for purposes of this section if:

- a) The truck is titled in the DBE's name; or,  
b) The DBE leases the truck under a valid lease-to-own agreement and the driver of the truck is an employee of the DBE.

The DBE must submit documentation to SCDOT to establish the number of trucks the DBE owns, operates and insures. The DBE must submit the documentation to SCDOT's MSBA at the time of certification, annual reporting on certification requirements, or at any time during the year that the DBE obtains additional trucks.

- (3) **Counting DBE trucking toward DBE goal.** The Contractor can count toward DBE goals, the total value of the transportation services the DBE provides using trucks the DBE owns, insures, and operates using drivers the DBE employs.

- (4) **Counting leased DBE trucking toward DBE goal.** The DBE may lease with another DBE firm, including an owner-operator who is certified as a DBE, to provide trucks on a project. In this case, the Contractor may count toward the DBE goal the total value of the transportation services provided by the DBE subcontractor.

- (5) **Counting leased non-DBE trucking toward the goal.** The DBE may lease trucks from a non-DBE firm, including an owner-operator, to provide trucks on a project. Prior to beginning work, the DBE must provide SCDOT's Resident Construction Engineer with a list identifying all DBE and non-DBE trucks and truck numbers that will be used on the project. In this case, the Contractor may count toward the DBE goal the total value of the transportation services provided in each quarter by the non-DBE trucks, not to exceed the value of the transportation services provided by DBE-owned trucks in that quarter. For example, in a given quarter, if DBE-owned trucks provide transportation services of \$50,000, while non-DBE trucks provide transportation services of \$75,000, a maximum of \$100,000 can be counted toward the DBE goal in that quarter.

For purposes of this paragraph (5), a lease (example attached) 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 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 a placard with the name and USDOT identification number of the DBE leasing the truck. The placard must be legible and visible when standing at least 15 feet from the driver's side of the truck. It may be affixed to the side of the truck or inside the cab window as long as it does not interfere with the safe operation of the truck. See example below. Failure to display the name and identification number of the DBE firm may subject the Contractor to sanctions (part B 1 above).

Sample placard:

|  |
|--|
| Operated by:<br><br>Bell's Trucking, LLC<br>USDOT 123456 |
|--|

**NOTE: DBE firms may not receive credit for DBE participation when leasing non-DBE owned trucks from the Prime Contractor or its affiliates with whom the DBE firm is subcontracted as 49 CFR 26.55(a) (1) applies.**

E. DBE Manufacturers and Dealers. The Contractor can count expenditures with DBEs for materials or supplies toward DBE goals in accordance with the following rules:

- (1) DBE Manufacturers. The Contractor can count 100 percent of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, 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 specifications. The DBE must be listed as a “manufacturer” in the “South Carolina Unified DBE Directory” to be considered a manufacturer for purposes of these counting rules.
- (2) DBE Dealers/Suppliers. The Contractor can count 60 percent of the cost of the materials or supplies toward DBE goals if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, 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 by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The DBE must be listed as a “dealer” in the South Carolina Unified DBE Directory to be considered a dealer for purposes of these counting rules.
- (3) DBE Brokers. A Contractor can count 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 material or supplies required on a job site, toward DBE goals with respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer/supplier.

#### 4. JOINT CHECKS.

The Director of Construction must approve all requests for a Contractor to issue and use joint checks (attached) with a DBE. All of the following conditions apply:

- A. The DBE must submit a request to the Director of Construction which includes a formalized agreement between all parties that specify the conditions under which the arrangement will be permitted;
- B. The DBE remains responsible for all other elements of 49 CFR 26.55(c)(1). SCDOT must clearly determine that independence is not threatened because the DBE retains final decision making responsibility; and
- C. There can be no requirement by the prime Contractor that a DBE use a specific supplier nor the prime Contractor’s negotiated unit price.

## 5. **REPORTS**

The Contractor shall provide SCDOT the following reports and information. THIS REQUIREMENT APPLIES REGARDLESS OF WHETHER THERE IS A DBE CONTRACT GOAL ASSIGNED TO THE CONTRACT.

A. **DBE Quarterly Reports.** The Contractor shall provide DBE Quarterly Reports showing the dollar amount of payments to each certified DBE. The Contractor and each DBE that received payment must sign the report. The Contractor's and DBE's signature on the Quarterly Report shall constitute certification that the DBE has performed the work, and that the Contractor is entitled to credit toward the DBE goal, for the amount shown in accordance with the counting rules set forth in Section 3 above. The report shall include the amount paid to each DBE for the quarter and the total amount paid to each DBE on the contract. The report must include DBE subcontractors, hauling firms, and suppliers. The report shall be submitted in duplicate to the Resident Construction Engineer by the 15th of the month after each calendar quarter (January, April, July, and October). The failure to submit the quarterly report may result in the withholding of monthly progress and/or final payment. The Quarterly Report must be submitted for each quarter, even if no payments have been made to a DBE in that quarter. DBEs are not required to sign the report when no payments have been made to a DBE in a quarter.

B. **Trucker's Reports.** All DBE haulers must complete and submit a DBE Trucker's Report, along with the DBE quarterly report, when the DBE leases trucks from another firm. The DBE hauler must list all trucks leased, payments made to the lessee during the quarter, and identify whether each leased truck is owned by a certified DBE or non-DBE. DBE Haulers must also submit one copy of each lease agreement to the Resident Construction Engineer, prior to the start of work for each truck leased. A 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 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.

C. **Other Documents.** Upon request of SCDOT, the Contractor and all subcontractors shall furnish all documents necessary to verify the amount and costs of the materials or services provided by certified DBE suppliers or subcontractors including subcontracts. The Contractor shall keep the documents that verify this information for at least three years from the date of final close-out of the contract. Failure to provide these documents upon request may result in the withholding of monthly progress and/or final payment or disqualifying the Contractor from bidding pursuant to R. 63-306, South Carolina State Regulations.

## 6. **CONTRACT COMPLETION – DETERMINATION OF WHETHER CONTRACTOR HAS MET THE GOAL OR MADE GOOD FAITH EFFORTS**

A. **DBE Closeout.** Final DBE Quarterly reports, documentation concerning missed commitments and/or Good Faith Efforts are due to the RCE no later than thirty (30) calendar days from the significant work completion date.

B. **Review by SCDOT.** After receipt of the final DBE Quarterly Reports, SCDOT will review the necessary contract documentation to determine whether the Contractor has met the DBE commitments and contract goal.

C. **Notification of Failure to Meet Goal.** If the documentation indicates that the Contractor has not met the DBE commitments and contract goal, the Director of Construction will notify the Contractor in writing and request documentation of the Contractor's good faith efforts to meet the goal.

D. **Determination of Good Faith Efforts.** The Contractor shall submit documentation demonstrating good faith efforts to meet the contract commitments and goal to the Director of Construction within thirty (30) days of the date of the "Notification of Failure to Meet Goal." The Director of Construction will provide the Contractor with written notice of SCDOT's determination, whether good faith efforts have been demonstrated.

E. Request for Reconsideration.

1. The Contractor may request a reconsideration by filing a written request with the Director of Construction within ten (10) business days after receipt of the determination if the Contractor disagrees with SCDOT's determination of post construction compliance.
2. The Contractor shall submit any additional documentation that it wishes to be considered in support of its position, within ten (10) business days of its request for reconsideration.
3. The determination shall be final if the Contractor fails to request a reconsideration within ten (10) days.
4. If the Contractor requests reconsideration, the Director of Construction Office will appoint a Reconsideration Official, who did not take part in the original determination to review the decision and supporting documentation (hereinafter referred to as the "Reconsideration Official"). FHWA may participate in the review process.
5. The Reconsideration Official will contact the Contractor and schedule a meeting with the Contractor. The meeting will be held at the SCDOT Headquarters Building in Columbia or virtually. At the meeting, the Contractor will have an opportunity to present oral and written evidence to demonstrate that good faith efforts were made to meet the DBE commitments and contract goal. The Reconsideration Official may also consider evidence presented by SCDOT at the same meeting.
6. After the meeting, the Reconsideration Official will issue a written report and recommendation to the Director of Construction. The Director of Construction shall make the final decision on the issue. The Director of Construction will notify the Contractor of the final decision in writing.

## **PART B (2) INSTRUCTIONS TO CONTRACTORS**

### **REQUIREMENTS – ALTERNATIVE DELIVERY**

**NOTE:** References to the Director of Construction is interchangeable with Director of Alternative Delivery

#### A. GOAL

The DBE goal on this project is located in the Contract Agreement.

#### B. GENERAL

Contractor shall comply with Parts A and B (1) above, except as specifically modified pursuant to this section. This section modifies the timing and steps for which the Contractor is to submit DBE committals for an Alternative Delivery project.

#### C. DBE PROGRAM RELATED CERTIFICATIONS

The Contractor agrees to each of the following DBE Program-related conditions and assurances:

1. Contractor shall adhere to the requirements of 49 CFR 26 and this supplemental specification.
2. Contractor's failure to comply may result in one or more sanctions, as outlined in Part B (1) above.
3. Contractor shall ensure DBE firms are given full and fair opportunities to participate with the Contractor on this project.
4. Contractor shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract.
5. Contractor will not prevent a DBE firm from providing quotations to other contractors.
6. Contractor shall adhere to the rules and requirements of good faith efforts in seeking qualified DBE firms.
7. Contractor shall adhere to the rules and requirements of Commercially Useful Function (CUF) as described in 49 CFR 26 and Part B (1) above.

#### D. ALTERNATIVE DELIVERY DBE PROGRAM COMPLIANCE PROCEDURES

##### 1. DBE Utilization Commitments Plan

a. Within thirty (30) calendar days from the effective date of the Agreement, the Contractor shall submit to SCDOT a notarized DBE Utilization Commitments Plan (attached) for review and approval. This plan shall include the following information:

- 1) The various work elements the Contractor anticipates subcontracting to DBE firms in order to meet the established contract goal;
- 2) The expected dollar amount and contract percentages of each work element to be applied towards meeting the contract goal; and
- 3) Anticipated timeframes for which Contractor expects DBE subcontracts to be executed for each of the work elements identified.

b. Failure to submit the DBE Utilization Commitments Plan as required may result in the suspension of reviewing design submittals, withhold progress payments and/or stop all construction work. This will not delay the issuance of the Notice to Proceed, thereby commencing construction time.



c. As the Project proceeds through the design phase, the Contractor may submit revisions to the approved DBE Utilization Commitments Plan, if necessary, for the SCDOT's consideration and approval. Reasons for the revisions shall be documented by the Contractor and included in the revision request.

d. The DBE Utilization Commitments Plan must identify an active DBE liaison officer responsible for administering the DBE program and promoting an inclusive DBE program.

e. After approval of the DBE Utilization Commitments Plan, Contractor may begin submitting DBE Committal Sheet.

2. Establishing DBE Committals

a. The Contractor shall aggressively implement the approved DBE Utilization Commitments Plan by submitting DBE Committal Sheets listing specific DBE firms to carry out the identified work elements. The use of DBE firms and the information to be provided on the DBE Committal Sheet shall be as instructed in Part a. above. The Contractor's Final DBE Committal Sheet(s) with signed quotes on DBE company letterhead must be submitted and approved thirty (30) days prior to the start of construction activity. Failure to meet this deadline may result in withholding progress payments and construction activity will not begin until all DBE committals sheets are approved by SCDOT. The DCE may, at his or her discretion, approve construction activity in preparation for the start of construction activities. If the work is being performed by a DBE firm, a DBE committal sheet will be required seven (7) business days before the firm starts working. A copy of the fully executed DBE subcontractor agreement is required at the time the subcontractor's request is submitted.

b. If the Final DBE Committal Sheet(s) does not meet the DBE contract goal, the Contractor shall comply with the good faith efforts procedures in accordance with Part a. above, with the exception that the good faith information is due within three (3) business days, following the submission of final DBE committal sheet.

c. The start of construction will be established by the Construction Alternative Delivery Engineer (CADE). For the purposes of the DBE program, construction begins when within seven (7) days of the Contractor's issuance of the Notice of Intent (NOI).

Failure to submit all committals will delay the NOI submission and may result in withholding progress payments.

The CADE has the ability to allow early limited construction of work not requiring an NOI or for utility work under limited NOI's if the DBE committal is submitted and approved 7 days prior to start of work.

3. Progress Review Meetings / Monthly Updates

a. Implementation of the DBE Utilization Commitments Plan shall be a discussion point during each progress review meeting until such time as the SCDOT deems it a closed issue.

b. The DBE liaison officer shall attend all progress review meetings (in person or via teleconference).

c. Contractor's failure to submit monthly updates or if SCDOT believes the efforts of the Contractor in implementing the DBE Utilization Commitments Plan are insufficient, the Contractor may incur sanctions. SCDOT's approval date of the DBE Utilization Commitments Plan will establish the date for which monthly updates are required. Failure to submit monthly updates may result in withholding of payments.

4. Contractor's Obligation Post DBE Committal

a. Once a firm is listed on the DBE Committal sheet, the Contractor shall administer the subcontract with the firm in accordance with the instructions provided in Part 1B(1).

b. Contractor must invite all subcontractors to the pre-construction/partnering session(s) for the "Kick-off" of construction activities.

c. Contractor, for itself, and for its subcontractors and suppliers, whether certified DBE firm or not, commits to complying fully with all federal and state DBE provisions and agrees to assume these Contractual obligations and to bind the alternative delivery team contractually to the same at the Contractor's expense.

d. Special Rules for Alternative Delivery

(1) When the Contractor changes work that results in the reduction or elimination of work that the Alternative Delivery team committed to be performed by a DBE, the Alternative Delivery team shall seek additional participation by DBEs equal to the reduced DBE participation caused by the change.

(2) DBE goals established on Alternative Delivery projects may require a portion of the overall goal to be met using DBE firms performing in the professional services areas. This will require the Contractor to submit DBE committal sheets within 30 days from contract execution to meet the percentage identified for professional services. The remaining committals will be required as stated in D (2) above.

Firms that provide Professional Services are those defined under Engineering and Design Related Services set forth in the SCDOT Manual for Procurement, Management and Administration of Engineering and Design related services, dated May 1, 2018 and can be found at:

<http://info2.scdot.org/professionalserv/HostDocs/PSCO-Manual-5-1-2018.pdf>.

(3) Contractor is required to establish two, one-week sessions for firms certified as DBEs to meet one-on-one in-person with the contractor beginning 30 days from project award. These sessions will afford DBE firms the ability to meet and offer their services for subcontracting opportunities. This will be in lieu of the Department's DBE outreach sessions usually held within 30 days of when the short-listed firms are identified. It is recommended the proposer hold additional in-person sessions within 90 (ninety) business days of the beginning of construction.

(4) Contractor is required to identify an experienced point-of-contact responsible for administrative matters, related to the DBE program. The Project Manager will be the point of contact to address issues related to DBE program compliance.

(5) Contractor will make key managers and field supervisors available for a one-time SCDOT provided training sessions concerning DBE program compliance. Newly hired managers and field supervisors shall attend a training session within 90 (ninety) business days of hire for this project.

The SCDOT Minority & Small Business Affairs' DBE Alternative Delivery Support, Technical Assistance and Compliance team is available to assist with the successful implementation and understanding DBE program requirements and meeting the project's DBE goal.

# DISADVANTAGED BUSINESS ENTERPRISES (DBE)

## COMMITTAL SHEET

Information must be shown on this sheet as required by the supplemental specifications entitled "Disadvantaged Business Enterprises (DBE) Supplemental Specification" included in this proposal.

**FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN THE AWARD BEING MADE TO THE NEXT LOWEST RESPONSIBLE AND RESPONSIVE BIDDER. FOR ALTERNATIVE DELIVERY PROJECTS, FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN SANCTIONS IN ACCORDANCE WITH PART B OF THE DBE SUPPLEMENTAL SPECIFICATIONS.**

| <sup>1</sup> Name & Address of DBE's (Sub-Contractor/Sub-consultant or Supplier) | <sup>2</sup> Percent | <sup>3</sup> Description of Work and Approximate Quantity<br><sup>6</sup> (show percent when appropriate) |      |      |                         | <sup>5</sup> Dollar Value |
|--|----------------------|---|------|------|-------------------------|---------------------------|
|  |                      | Item  | Qty. | Unit | <sup>4</sup> Unit Price |                           |
|  |                      |   |      |      |                         |                           |
|  |                      |   |      |      |                         |                           |
|  |                      |   |      |      |                         |                           |
|  |                      |   |      |      |                         |                           |
|  |                      |   |      |      |                         |                           |
|  |                      |   |      |      |                         |                           |

**NOTE: IF THE DBE GOAL IS NOT MET, THE CONTRACTOR MUST REQUEST A GOOD FAITH EFFORT REVIEW BY 5PM THE NEXT CALENDAR DAY.**

**Prime Contractor** \_\_\_\_\_ **SCDOT Project Number** \_\_\_\_\_

**Total amount committed \$** \_\_\_\_\_ **Percentage committed:** \_\_\_\_\_ **% DBE Goal:** \_\_\_\_\_ **%**

1. The designation of Firm A and/or B is not considered acceptable. I hereby certify that this company has communicated with and received quotes from the DBE's listed above and that they are willing to perform the work as listed above and that this company is committed to utilizing the above firm(s) on this contract.
2. Percent – show percent of total contract amount committed to each DBE listed.
3. All information requested must be included unless item is listed in proposal on a lump sum basis.
4. Unit Price – show unit price quoted by DBE.
5. Dollar Value – extended amount based on Quantity and Unit Price.
6. Applies to lump sum items only. When using lump sum, the DBE quote must detail work to be performed with costs, quantities, material, etc.

This form may be reproduced or additional sheets added in order to provide all requested information.

SWORN to before me this \_\_\_\_\_

Day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Signature (SEAL)

Notary Public for \_\_\_\_\_

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Prime Contractor Representative

By: \_\_\_\_\_  
Prime Contract Representative Signature

Title: \_\_\_\_\_  
Title of Representative

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

## SCDOT DBE Utilization Commitments Plan

| Prime Contractor:               |                                |                       |                                      |
|---------------------------------|--------------------------------|-----------------------|--------------------------------------|
| Project ID:                     |                                | Project Name:         |                                      |
| Project Location:               |                                |                       |                                      |
| DBE Liaison Name:               |                                | Contact Number/Email: |                                      |
| Overall Project DBE Goal:     % |                                |                       |                                      |
|                                 |                                |                       |                                      |
| Description of Work / Scopes    | Anticipated Subcontract Amount | Percent of Contract   | Expected Subcontract Execution Dates |
|                                 |                                |                       |                                      |
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| Total                           |                                |                       |                                      |
|                                 |                                |                       |                                      |

SWORN to before me this \_\_\_\_\_

\_\_\_\_\_  
Printed Name of Prime Contractor Representative

Day of \_\_\_\_\_, 20\_\_\_\_

By: \_\_\_\_\_  
Prime Contract Representative Signature

\_\_\_\_\_  
Notary Signature (SEAL)

Notary Public for \_\_\_\_\_

Title: \_\_\_\_\_  
Title of Representative

My commission expires: \_\_\_\_\_

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

## SCDOT DBE JOINT CHECK APPROVAL FORM

**Project Number:** \_\_\_\_\_

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

**DBE Subcontractor Firm:** \_\_\_\_\_

**Prime Contractor Firm:** \_\_\_\_\_

**Supplier Firm:** \_\_\_\_\_

SCDOT will closely monitor the use of joint checks. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must “be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself.” Only when a DBE meets all of these requirements should credit be counted for the procurement of the items by the DBE. Please refer to the attached Procedures for Using Joint Checks under the Disadvantaged Business Program for qualifying conditions. If proper procedures are not followed or SCDOT determines that the arrangement results in lack of independence for the DBE involved, no credit for the DBE’s participation as it relates to material cost will be counted toward the contract goal requirement.

I have read and understand the above information and have attached a copy of the Joint Check Agreement relating to this request. I hereby acknowledge that the information provided on this form is true and accurate.

|   |  |
|---|--|
| <b>Authorized DBE Representative</b>                              |  |
|   |  |
| Signature   | Title  |
| Date  |  |
| <b>Authorized Prime Contractor Representative</b>                 |  |
|   |  |
| Signature   | Title  |
| Date  |  |
| <b>Authorized Material Supplier Representative</b>                |  |
|   |  |
| Signature   | Title  |
| Date  |  |
| <b>SCDOT USE ONLY</b>   |  |
| Date Received:  | Director of Construction or Authorized Representative:   |
| <input type="checkbox"/> Approved <input type="checkbox"/> Denied | <i>Note: Do not process this request without a signed copy (all parties) of the Joint Check Agreement, statement of history, and any related policies.</i> |
| Comments:   |  |
|   |  |