



South Carolina
Department of Transportation

May 16, 2018

Dear Consultant:

Thank you for your continued support of the South Carolina Department of Transportation's (SCDOT) Disadvantaged Business Enterprise (DBE) program. We value your commitment to SCDOT and to the DBE program.

SCDOT has begun to establish mandatory DBE goals on federally funded Professional Service contracts in accordance with 49 CFR 26. As these projects are advertised, the project specific DBE goal will be listed along with a link to the Department's Disadvantaged Business Enterprise (DBE) Supplemental Specifications for Professional Services, as approved by the Federal Highway Administration (FHWA) on July 27, 2016. A copy of the specification can be found at the link below:

<http://info2.scdot.org/SCDOTProfessionalServ/HostsDocs/DBESupplementalSpecs.pdf>

In accordance with federal law, a project with mandatory DBE goals cannot be awarded quality points in the selection process. For federally funded projects without an established DBE goal, a DBE utilization plan may still be required.

Please feel free to contact Darrin Player, Chief Procurement Officer, with questions on the selection process at 803-737-1472, or myself at 803-737-1717, for any additional information concerning the DBE program.

Sincerely,

A handwritten signature in blue ink that reads "Greg Davis".


Greg Davis

Director, Minority & Small Business Affairs

GQD:edb
File DBE/GL

7/27/16

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUPPLEMENTAL SPECIFICATIONS
PROFESSIONAL SERVICES**

APPROVED: JULY 27, 2016
Division Administrator
By: 
FEDERAL HIGHWAY ADMINISTRATION

It is the policy of the South Carolina Department of Transportation (SCDOT) to ensure nondiscrimination in the award and administration of federally assisted contracts and to use Disadvantaged Business Enterprises (DBEs) 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 for Professional Services," includes two main parts:

- Part A - "Instructions to Proposers – Pre-award Requirements"
- Part B - "Instructions to Consultants – Post-award Requirements"

PART A - INSTRUCTIONS TO PROPOSERS – PRE-AWARD REQUIREMENTS

1. DBE CONTRACT GOAL

A. If there is a DBE participation goal for this contract it will be set forth in the project solicitation (hereinafter referred to as "the DBE contract goal." Even if there is not a DBE contract goal on the contract, the Consultant must comply with the DBE reporting requirements set forth in Part B, paragraph 4A.

B. Each proposer shall exercise all necessary and reasonable steps to ensure that DBEs perform services on this contract in an amount that meets or exceeds the DBE goal and commitment. Submitting a proposal via ProjectWise shall constitute an agreement by the proposer that if awarded the contract, it will meet or exceed the DBE goal and commitment or make good faith efforts to meet the DBE goal or commitment.

C. The DBE contract goal will be discussed during the negotiation phase of the procurement.

D. If there are multiple phases to a contract, a DBE contract goal may be assigned to each contract phase and the DBE contract goal for each phase will be discussed during the negotiations. However, it should be noted that even though commitments are not required until the negotiation stage with the successful proposer for each phase of work, the proposers will still have to identify the key firms and individuals (both DBE & Non-DBE) when submitting proposals to ensure that the "most qualified" team is selected.

2. DBE SUBMITTALS

A. During the negotiations stage, the proposer must submit the following:

- 1) A completed DBE Committal Sheet, "Attachment A" showing how it intends to meet the DBE contract goal, which shall include the following information:
 - a) The names and addresses of certified DBEs whose services will be used in the contract.
 - b) A description of the work to be performed by each DBE [Work type and Work Code]
 - c) The percentage of work to be performed by the DBE [Note: Only select the Work Type and Work Code for which the selected DBE firm has been certified to perform].
 - d) The total dollar value for each DBE listed.
- 2) Copies of signed statements or quotes from each of the DBEs listed on the DBE Committal Sheet. The signed statements or quotes shall verify the description of work

anticipated, percentages of anticipated work on this contract, dollar values listed on the DBE Committal Sheet, statement from the DBE that it is willing and committed to participate in the contract as provided in the DBE Committal Sheet. Signed verification statements must be on the DBEs letterhead and contain the following information: date, printed name, address, and phone number of the authorized individual providing the statement, the project name and identification number. The statement shall be addressed to the Consultant from the DBE.

- 3) If the DBE participation shown on the DBE Committal Sheet does not meet the DBE contract goal, proposer must submit evidence that it has used good faith efforts to meet the DBE contract goal.

B. If, during the negotiation phase, work proposed to be performed by DBEs is decreased or eliminated through negotiation of the scope of services, proposer must use good faith efforts in revision of its proposal to provide for the participation of DBEs to meet the established DBE goal. The fact that the proposer could perform the work with its own forces does not relieve it from making good faith efforts to meet the DBE contract goal.

C. The listing of DBEs on the Committal Sheet shall constitute a formal commitment to utilize the listed DBEs, subject to the replacement requirement set forth below in Section 2 of Part B. A DBE listed on the Committal Sheet hereinafter shall be referred to as a "committed DBE."

D. In meeting the DBE contract goal, the Consultant shall use only certified DBEs included in the "South Carolina Unified Certification Program DBE Directory" (hereinafter referred to as the "Unified DBE Directory.")

E. Failure to submit either of the following, within five (5) calendar days after the Notice of Intent to Finalize the Negotiated Contract is issued by SCDOT, will deem the proposal non-responsive, and SCDOT may commence negotiations with the next ranked proposer.

- 1) A completed DBE Committal Sheet with the required supporting statements; or
- 2) Evidence that proposer has made good faith efforts to meet the DBE contract goal, with a request for a Good Faith Efforts Review in accordance with Section A (3) below.

3. GOOD FAITH EFFORTS REQUIREMENTS

A. Request for Good Faith Efforts Review.

- 1) If the Proposer does not meet the DBE contract goal through its DBE committals, Proposer must submit in writing (faxes and emails are acceptable) a Request for Good Faith Efforts Review within five (5) calendar days of the notice of intent to finalize the negotiated Consultant Agreement by SCDOT.
- 2) Within three (3) calendar days thereafter, Proposer must submit to SCDOT Professional Services Office sufficient documentation to show that it has made good faith efforts to meet the DBE contract goal. One complete set and three (3) copies of supporting information must be provided. Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a sample representative letter along with the list of the DBE firms solicited. Documentation of the efforts listed in (B) below are some of the items SCDOT will consider in evaluating the proposer's good faith efforts. The documentation may include written sub-consultant quotations, expressions of interest, telephone log notations of verbal quotations or expressions of interest, or other types of quotations or expressions of interest documents.
- 3) If the Proposer fails to submit the Request for Good Faith Efforts Review and the supporting good faith efforts documentation within the required time frame, the Consultant's proposal will be considered non-responsive and will be rejected.

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

- (1) Did the proposer attend any pre-proposal meetings that were scheduled by SCDOT or Local Public Agency to inform DBEs of subcontracting opportunities?
- (2) Did the proposer provide solicitations through all reasonable and available means (e.g. Proposer attendance at pre-proposal meetings, advertising and/or written notices at least ten (10) calendar days prior to proposal submittal; showing the proposer provided written notice to all DBEs listed in the "Unified DBE Directory" that specialize in the areas of work that could be subcontracted)?
- (3) Did the proposer 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 participate, or there are no DBEs that specialize in the area of work to be subcontracted, did the proposer contact SCDOT's Office of Business Development & Special Programs to give notification of the proposer's inability to obtain DBE interest or quotes?
- (4) Did the proposer select portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE contract goal? This includes, where appropriate, breaking out contract items of work into economically feasible units to facilitate DBE participation, even when the proposer might otherwise perform these items of work with its own forces.
- (5) Did the proposer provide interested DBEs with adequate and timely information about the scope and performance requirements of the contract?
- (6) Did the proposer 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 shall be noted in writing with a description as to why an agreement could not be reached. The fact that the proposer has the ability or desire to perform the work with its own forces will not be considered as sound reason for rejecting a DBEs expression of interest or quotes.
- (7) 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 for the work is not the lowest quotation received will not in and of itself be considered as a sound reason for rejecting the quotation as unacceptable, as long as the quote is not unreasonable.
- (8) Did the proposer specifically negotiate with non-DBE sub-consultants when the work to be subcontracted included potential for DBE participation?
- (9) Any other evidence that the proposer submits which demonstrates that the proposer has made reasonable good faith efforts to include DBE participation.
- (10) Did the proposer contact SCDOT for assistance in locating certified DBEs?

C. Nothing in this provision shall be construed to require the proposer to accept unreasonable conditions in order to satisfy DBE contract goals.

D. SCDOT may give the proposer an opportunity to resolve any deficiencies resulting from a minor informality in the DBE commitment or waive any such deficiency when it is in the best interest of the State. A minor informality is one which is merely a matter of form or is some immaterial variation from the exact requirements of the project solicitation having no effect or merely a trivial or negligible effect on the DBE contract goal.

4. DETERMINATION AND RECONSIDERATION PROCEDURES

A. SCDOT's Chief Procurement Officer will notify the proposer of the results of the Good Faith Efforts Determination by email and by US Mail or hand-delivery. The proposer may request a reconsideration of this determination.

B. The proposer must deliver to SCDOT's Deputy Secretary of Finance and Procurement a written (faxes and emails are acceptable) Request for Reconsideration within three (3) calendar days of receipt of the determination. Within six (6) calendar days of receipt of the Request for Reconsideration, the proposer must provide written documentation to SCDOT Deputy Secretary of Finance and Procurement supporting its position. Only documentation dated prior to the deadline to submit evidence of good faith efforts as set forth in Part A, paragraph 2E, may be used in support of its position. No DBE goal efforts performed after the deadline will be allowed as evidence. If the proposer fails to submit the Request for Reconsideration or the necessary supporting documentation with the required time frames, the Good Faith Efforts Determination shall become final.

C. To reconsider the proposer's DBE commitment or good faith efforts, the Deputy Secretary for Finance and Procurement will designate a Reconsideration Panel consisting of three (3) SCDOT employees, who did not take part in the original determination. This panel will be comprised of: (1) one employee from the Pre-construction (1) one employee from the Office of Business Development & Special Programs, and (1) one employee at large (hereinafter referred to as the "Reconsideration Panel"). One of the representatives 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 proposer and schedule a meeting. The Reconsideration Panel will make reasonable efforts to accommodate the proposer's schedule; however, if the proposer is unavailable or not prepared for a hearing within ten (10) calendar days of receipt of SCDOT original written determination, the proposer'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. The proposer will be allowed up to two (2) hours to present written or oral evidence supporting its position.

E. The Reconsideration Panel will issue a written report and recommendation to the Deputy Secretary for Finance and Procurement. SCDOT shall not execute the Consultant Agreement until the Deputy Secretary issues a decision or the proposer waives its right to reconsideration either through failure to request reconsideration or failure to be available for the meeting. The Deputy Secretary will notify the proposer of the final decision in writing.

5. CONSEQUENCES OF FAILURE TO COMPLY WITH DBE PROVISIONS

A. Failure on the part of the proposer to meet the DBE contract goal or to demonstrate good faith efforts to meet the DBE contract goal will result in the proposer being deemed non-responsive and will result in rejection of the proposal. If rejected, SCDOT may commence negotiations with the next ranked proposer.

B. Prior to award of the contract, SCDOT reserves the right to cancel the solicitation, or reject any or all proposals, in whole or in part, when it is in the best interest of the State.

6. DIRECTORY OF SOUTH CAROLINA CERTIFIED DISADVANTAGED BUSINESS ENTERPRISES

A. The proposer is advised that the "Unified DBE Directory" pertains only to DBE certification and not to qualifications. It is the proposer's responsibility to determine the actual capabilities and/or limitations of the certified DBE firms. The directory can be found at http://www.scdot.org/doing/businessDevelop_SCUnified.aspx.

B. In meeting the DBE contract goal, the proposer shall use only DBEs that are included in the "Unified DBE Directory" contained in the Directory for the month the proposal is submitted. The proposer may only count work toward the DBE contract goal in the areas for which the DBE has been certified, unless prior written approval from SCDOT is obtained. The proposer and the DBE must jointly apply to SCDOT's Chief of Procurement for approval of work in an area of work other than that 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 within the two (2) calendar days after issuance of the notice of intent to finalize the negotiated Consultant Agreement by SCDOT. The Chief of Procurement has the right to approve or disapprove the request. The Chief of Procurement will give the proposer and the DBE written notice of the decision no later than seven (7) calendar days after the request has been received. If approved, a copy of the SCDOT's written approval must accompany the submission of the sub-consultant'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 proposer may print a copy of the "Unified DBE Directory" from SCDOT web page at http://www.scdot.org/doing/businessDevelop_SCUnified.aspx.

7. ADDITIONAL DBE PARTICIPATION

Whether or not there is a DBE contract goal on the contract, the proposer is strongly encouraged to obtain the maximum amount of DBE participation feasible on the contract. The selected consultant will be required to report all DBE participation through the DBE Quarterly Reports required by Part B, paragraph 4A below.

8. PROPOSER'S RESPONSIBILITY TO REPORT PROPOSER INFORMATION

The proposer shall keep a list of all sub-consultants (DBE or non-DBE) who submitted quotes or expressed an interest in work as a sub-consultant on this contract. Proposers must submit the names and addresses of all firms (DBE and non-DBE) who expressed interest to the Proposer for subcontracts on SCDOT projects throughout the course of the previous year.

PART B - INSTRUCTIONS TO CONSULTANTS– POST-AWARD REQUIREMENTS

1. CONSULTANT'S OBLIGATIONS

A. 49 CFR 26. The Consultant shall carry out the applicable requirements of 49 CFR Part 26 and these DBE Supplemental Specifications in the award and administration of this contract. Failure by the Consultant to carry out these requirements is a material breach of the contract, and may result in the termination of the contract or such other remedy as SCDOT deems appropriate.

B. Meeting both the Goal and Commitment or Making Good Faith Efforts to Meet the Goal and Commitment. It is the Consultant's responsibility to meet or make good faith efforts to meet the DBE contract goal and commitments. 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;
- (2) Declaring the Consultant in default pursuant to the terms of the Consultant Agreement and terminating the contract;
- (3) Assessing sanctions in the amount of the difference in the DBE contract committal and the actual payments made to each certified DBEs;

- (4) Disqualifying the Consultant from future submittal of proposals;

C. Using the DBEs shown on the Committal Sheet to Perform the Work. The Consultant must utilize the specific DBEs listed on the "DBE Committal Sheet" to perform the work for which each is listed unless the Consultant obtains prior written approval from the Chief of Procurement to perform the work with other forces as set forth in Section 2 below. The Consultant shall not be entitled to any payment for such work unless it is performed by the listed DBE or, with prior written approval of the Chief of Procurement, by other forces (including those of the Consultant). Failure to meet a commitment to a specific DBE may result in the sanctions listed in Section 1(B) above, unless prior written approval is obtained for replacement of the committed DBE.

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

D. Incorporating DBE Supplemental Provisions in Subcontracts. The Consultant shall make available, at the request of SCDOT, a copy of all DBE subcontracts. The Consultant shall ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontracts be performed in accordance with these DBE Supplemental Specifications. The Consultant is advised to insert the following provision in each subcontract or agreement:

"This contract or agreement shall be performed in accordance with the requirements of the SCDOT DBE Supplemental Specifications dated December 18, 2015."

E. DBE Status Spreadsheet and Quarterly Report

- Complete and submit a DBE Status Spreadsheet and DBE Quarterly Report to the Contract Manager (CM) by the 15th day of January, April, July and October for all DBE firms providing services and/or work on a project.
- Submit a DBE Quarterly Report for each DBE who performed work on the project and the amount paid to the DBE during each reporting period on a quarterly basis.
- A DBE Quarterly Report and DBE Status Spreadsheet should be completed even if the DBE was not paid during the reporting period.
- DBE Quarterly reports and DBE Status Spreadsheets should be submitted for all DBE firms until the contract ends (even if a DBE firm's work has been completed prior to the contract ending).
- Maintain a copy of all documents for their records

2. REPLACEMENT OF CERTIFIED DBES

A. Requirement for Replacement. The following shall apply to replacement of a DBE listed on the "DBE Committal Sheet":

- (1) When a DBE listed on the DBE committal sheet (hereafter referred to as a "committed DBE") is unable or unwilling to perform the work in accordance with the subcontract, the Consultant shall follow the replacement procedures in Section 2(B) below. Failure on the part of the Consultant 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 execution of a valid subcontract agreement with the Consultant:

- (a) The Consultant may continue to utilize the decertified DBE on the contract and receive credit toward the DBE contract goal for the DBEs work unless the Consultant is implicated in the DBE decertification. However, the Consultant is encouraged to replace the decertified DBE with a certified DBE 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 Consultant may continue to utilize the graduated DBE on the contract and receive credit toward the DBE contract goal for the DBEs work.
- (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 Consultant, the Consultant shall follow the replacement procedures in Section 2(B) below. Failure on the part of the Consultant to comply with this requirement shall constitute a breach of the contract and may be cause for the imposition of the sanctions set forth in Section 1(B) above.

B. Replacement Procedures. In order to replace a committed DBE, the Consultant must obtain prior written approval from the Chief of Procurement. Prior to requesting SCDOT's approval to terminate and/or substitute a committed DBE, the Consultant is to give notice to the DBE sub-consultant in writing (certified mail) with a copy provided to both the Chief of Procurement and the Director of Business Development & Special Programs. The purpose of this notice is to both inform the DBE sub-consultant of the Consultant's intent to request SCDOT's approval to terminate and/or substitute as well as to outline the reasons for the request. The DBE sub-consultant shall be given five (5) calendar 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) calendar days may be allowed as a matter of public necessity. If SCDOT determines a shorter response period is justified, the Consultant and committed DBE will be advised in writing. In no case shall the Consultant's ability to negotiate a more advantageous contract with another sub-consultant be considered a valid basis for replacement. If the Consultant obtains the Chief of Procurement's approval for the replacement, the Consultant shall replace the committed DBE with another certified DBE or make good faith efforts to do so as set forth in Section 2(C) below. Any DBE who is certified at the time of replacement may be used as a replacement. If the Chief of Procurement does not approve of replacement, the Consultant shall continue to use the committed DBE in accordance with the contract. Failure to do so may constitute cause for imposition of any of the sanctions set forth in Section 1(B) above.

C. Good Faith Efforts. After approval for replacement is obtained, if the Consultant is not able to find a replacement DBE, the Consultant shall provide the Chief of Procurement 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.
- (2) Statement of efforts to negotiate with certified DBEs for specific work tasks shall include 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 reasons for the Consultant's rejection. Rejection by the Consultant of a DBE solely because the replacement DBE cannot perform the work at the original price is not in itself evidence of good faith.
- (4) Documentation demonstrating that the Consultant contacted SCDOT's DBE Supportive Service Office for assistance in locating certified DBEs willing to take over that portion of work or do other work on the contract.

If SCDOT determines that the Consultant has made good faith efforts to replace the committed DBE with another certified DBE, then the remaining portion of the DBEs work shown on the "DBE Commitment Sheet" can be completed by the Consultant's own forces or by a non-DBE sub-consultant approved by SCDOT. The Consultant 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.

If SCDOT determines that the Consultant has not made good faith efforts to replace the committed DBE with another certified DBE, such failure may constitute cause for imposition of any of the sanctions set forth in Section 1(B) above.

D. Payment from SCDOT. The Consultant shall not be entitled to payment for work 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 Chief of Procurement has given written approval to replace the committed DBE as provided above; or
- (3) The work is performed by the Consultant or a non-DBE after SCDOT determines that the Consultant 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 (all references to "DBE" herein shall mean "certified DBE"). The Consultant is bound by these rules in regard to receiving and reporting credit toward the DBE contract goal. The Consultant 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 contract (or other contract not covered by paragraph A(2) of this section) that is performed by the DBEs own forces 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 sub-consultant purchases or leases from the prime Consultant or its affiliate) can be counted toward the goal.
- (2) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the sub-consultant is also a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE goals.
- (3) The Consultant can count expenditures to a DBE only if the DBE is certified by SCDOT, except as provided in section 2(A)(2) above, in the event a DBE loses eligibility status after a subcontract is signed.
- (4) The Consultant 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 forces can be counted toward DBE goals. A joint venture must be approved by the Chief Procurement Officer prior to start of the contract.

C. Commercially Useful Function. Expenditures to a DBE Consultant or sub-consultant can be counted toward DBE goals only if the DBE is performing a commercially useful function 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, with respect to materials and supplies used on the con-

tract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SCDOT will evaluate the amount of work subcontracted, industry practices, whether 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.

- (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. In determining whether a DBE is such an extra participant, SCDOT will examine similar transactions, particularly those in which DBEs do not participate.
- (3) 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, SCDOT will presume that it is not performing a commercially useful function.
- (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (3) of this section, the DBE may present evidence to rebut this presumption. 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.

4. REPORTS

The Consultant shall furnish to the SCDOT the following reports and information. **THIS REQUIREMENT APPLIES TO ALL DBE PARTICIPATION, REGARDLESS OF WHETHER THERE IS A DBE CONTRACT GOAL ASSIGNED TO THE CONTRACT.**

A. **DBE Quarterly Reports.** The Consultant shall provide to the SCDOT, DBE Quarterly Reports showing the dollar amount of payments to each certified DBE. The Consultant and each DBE that received payment must sign the report. The Consultant's and DBE's signature on the Quarterly Report shall constitute certification that the DBE has performed the work and that the Consultant 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 each DBE for the quarter and the total amount paid to each DBE on the contract. The report must include DBE sub-consultant's subcontracted firms and suppliers. The report shall be submitted in duplicate to the Program Manager by the 15th of the month after each calendar quarter (January, April, July, and October 15). 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. When no payments have been made to a DBE in a quarter, DBEs are not required to sign the report.

B. **Other Documents.** Upon request of SCDOT, the Consultant and all sub-consultants shall furnish documents, including subcontracts, necessary to verify the amount and costs of services provided by certified DBE suppliers or sub-consultants. The Consultant 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 Consultant from submitting future proposals.

5. CONTRACT COMPLETION – DETERMINATION OF WHETHER CONSULTANT HAS MET THE GOAL OR MADE GOOD FAITH EFFORTS

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

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

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

D. Request for Reconsideration. If the Consultant disagrees with SCDOT's determination of post contract compliance, the Consultant may request reconsideration by filing a written request with the Chief of Procurement within ten (10) calendar days after receipt of the determination. The Consultant shall submit any additional documentation that it wishes to be considered in support of its position within ten (10) calendar days of its request for reconsideration. If the Consultant fails to request reconsideration within ten (10) calendar days, the determination shall be final. If the Consultant requests reconsideration, the Chief of Procurement 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. The Reconsideration Official will contact the Consultant and schedule a meeting with the Consultant. The meeting will be held at the SCDOT Headquarters Building in Columbia. At the meeting, the Consultant 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. After the meeting, the Reconsideration Official will issue a written report and recommendation to the Chief of Procurement. The Chief of Procurement will make the final decision on the issue and notify the Consultant of the final decision in writing.

Note:

49 CFR 26 defines days to mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

ATTACHMENT A

DISADVANTAGED BUSINESS ENTERPRISES (DBE) COMMITTAL SHEET FOR PROPOSERS

FAILURE TO PROVIDE ALL INFORMATION REQUIRED ON THIS FORM MAY RESULT IN THE AWARD BEING MADE TO THE NEXT RESPONSIVE PROPOSER.

Name & Address of DBE *	Description of Work**	Percent***	Estimated Dollar Value

* The designation of Firm A and/or B is not acceptable. Must be a SCDOT Certified DBE.

** Can only be the work type DBE is certified to perform.

*** Percent of total contract amount committed to each listed DBE.

Proposer hereby certifies that it has communicated with and received quotes from the listed DBE; that the DBE is willing to perform the work listed above; and, that the Proposer is committed to utilizing the listed DBE for the listed work.

Date: _____

Proposer: _____

By: _____

Title: _____

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