



CITY OF CHICAGO
Department of Procurement Services
Aileen Velazquez, Chief Procurement Officer
121 North LaSalle Street, Room 806
Chicago, Illinois 60602-1284

Fax: 312-744-3281

**DBE SPECIAL CONDITIONS FOR FAA/FTA/FHWA (IDOT) FUNDED CONTRACTS
CONSTRUCTION, SERVICES, TASK ORDER SERVICES, AND SUPPLY**

ARTICLE 1. SPECIAL CONDITIONS REGARDING DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

Contractor must comply with the following terms and conditions where Work or Services are funded in whole or in part by any federal funds including but not limited to FHWA, FTA and FAA.

1.1. Policy and Terms

In the event of a conflict between these Special Conditions and 49 CFR Part 26, the provisions of 49 CFR Part 26 shall control.

It is the policy of the City that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26, have the maximum opportunity to participate fully in the performance of contracts subject to 49 CFR Part 26. Contractor must not discriminate against any person or business on the basis of race, color, national origin or sex in the performance of this Contract. Contractor must carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation (DOT)-assisted contracts and take affirmative action to ensure that businesses owned by socially and economically disadvantaged individuals have full opportunity to participate.

The City has set an overall DBE Program Goal of 30%.

Failure to carry out the commitments and policies set forth in this Article constitutes a material breach of the Contract and may result in the termination of the Contract or such remedy as the City deems appropriate.

1.1.1. Contract-Specific DBE Participation Goal

The City sets contract-specific goals for participation in furtherance of reaching its overall DBE Program Goal.

For purposes of this contract, the City has set the following contract goal:

Contract DBE Participation Goal: <<click and type goal amount>> percent.

Note: if this contract is task-order based, goals will be set for the individual task orders; in the context of each task order, these provisions will apply to those task order goals as if they were an overall contract goal.

A bid or proposal may be rejected as non-responsive if the bidder/proposer fails to submit one or more of the following with its bid demonstrating its good faith efforts to meet the Contract DBE Participation Goal by reaching out to DBEs to perform work on the contract:

- A. A DBE compliance plan demonstrating how the bidder/proposer plans to meet the Contract DBE Participation Goal (Schedule D, D-1 or D-3 and Schedule(s) C, C-1 or C-3); and/or
- B. Documentation of Good Faith Efforts to obtain DBE participation in this contract.

Note: Schedules D and C are used for contracts for construction work. Schedules D-1 and D-3 are used for contracts for services, and Schedules D-3 and C-3 are used for task order based contracts.

The bidder/proposer must make good faith efforts to obtain DBE participation in this contract. The commitment will be reflected in Schedule D, D-1 or D-3. The bidder/proposer must document that it has obtained enough DBE participation to meet the Contract DBE Participation Goal set forth above or, if unsuccessful in doing so, has made adequate Good Faith Efforts to meet the goal (see [Section 1.7](#) "Good Faith Efforts"). If awarded the Contract, Contractor must expend not less than the committed percentage of the total Contract Price (including any amendments and modifications) for contract participation by DBEs.

For purposes of evaluating bidder/proposer's responsiveness, the Contract DBE Participation Goal will be a percentage of the total contract value. The Contract DBE Participation Goal applies to the total value of the contract, inclusive of all amendments and modifications. The Chief Procurement Officer also has the authority to review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by 10 percent of the initial award or \$50,000, whichever is greater, for opportunities to increase participation of DBEs already involved in the contract.

The Contract DBE Participation Goal may be met by the bidder/proposer's status as DBE, or by joint venture with one or more DBEs (but only work performed by the DBEs own forces will be counted), or by subcontracting a portion of the work to one or more DBEs, or by purchasing materials used in the performance of the contract from one or more DBEs or by any combination of the foregoing, as further described in Section 1.5, "Counting DBE Participation Towards the Contract DBE Participation Goal."

1.1.2. DBE Financial Institutions

Bidder/Proposer is encouraged to use financial institutions owned and controlled by socially and economically disadvantaged individuals. Use of such institutions may be considered by the City as evidence of bidder/proposer's willingness to do business with DBEs. Information about such institutions is available in the City's DBE Program document. In addition, the Illinois Unified Certification Program (IL UCP) Disadvantaged Business Enterprises Directory is available via the internet at www.cityofchicago.org/procurement and in print at the City of Chicago, Bid and Bond Room, City Hall, 121 N. LaSalle, Room 301, Chicago, IL 60602.

1.1.3. DBE Participation Goals for Contract Modifications

The DBE Participation Goals established at the time of bid/proposal submission shall also apply to any modifications to the Contract after award. This is, any additional work and/or money added to the Contract must also adhere to these Special Conditions requiring Contractor to (sub)contract with DBEs to meet the DBE Participation Goals.

- Contractor must assist the Construction Manager or User Department in preparing its "proposed contract modification" by evaluating the subject matter of the modification and determining whether there are opportunities for DBE participation and at what rates.
- Contractor must produce a statement listing the DBEs that will be utilized on any contract modification. The statement must include the percentage of utilization of the firms. If no DBE participation is available, an explanation of good faith efforts to obtain participation must be included.

The Chief Procurement Officer shall review each proposed contract modification and amendment that by itself or aggregated with previous modification/amendment requests, increases the contract value by ten percent (10%) of the initial award, or \$50,000, whichever is less, for opportunities to increase the participation of DBEs already involved in the Contract.

1.2. Definitions and Usage

Terms that are capitalized in these Special Conditions are defined terms and have the meanings set forth in 49 CFR Part 26.5, unless otherwise defined in these Special Conditions or the Contract Documents.

"**Area of Specialty**" means the description of a DBE firm's business which has been determined by the certifying agency to be most reflective of the DBE firm's claimed specialty or expertise. Each DBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory. Credit toward the Contract DBE Participation Goal is limited to the participation of firms performing within their Areas of Specialty.

NOTICE: The Department of Procurement Services does not make any representation concerning the ability of any DBE to perform work within its Area of Specialty. It is the responsibility of all bidders/proposers to determine the capability and capacity of DBE firms to satisfactorily perform the work proposed.

Certain terms are used in these Special Conditions to indicate the stage of bidding, proposing or contracting in which certain obligations arise. The term "proposer" means a firm responding to a request for proposals by the City for professional or technical services or other procurement not adaptive to competitive bidding; a bidder or proposer becomes a "contractor" after being awarded a contract by the City.

"**Contractor**" also means "Consultant," if Consultant is the term used for the entity that has entered into this agreement or contract with the City.

"Directory" means the IL UCP Disadvantaged Business Enterprises Directory, maintained by the City as well as all IL UCP participating agencies, that identifies all firms eligible to participate as DBEs. The Directory lists the firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. The City revises the Directory on a monthly basis. The Directory is available via the internet on the City's web site at www.cityofchicago.org/procurement, and in print at the City of Chicago, Bid and Bond Room 121 N. LaSalle St., Room 301, Chicago, Illinois, 60602. Bidder/Proposers are responsible for verifying the current certification status of all proposed DBE firms.

"Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern that (i) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or in the case of a corporation, 51 percent of the stock is owned by one or more such individuals; (ii) whose management and daily operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; (iii) the personal net worth of the individuals who own it does not exceed the limit specified at 49 CFR Part 26; and (iv) it has been certified as a DBE in accordance with the procedures set out in 49 CFR Part 26.

"Joint Venture" means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

1.3. Third Party Challenges To Eligibility Of DBE Firm

As noted in 49 CFR Section 26.87, any third party (complainant) may file a complaint alleging that a currently certified DBE is ineligible. The complaint must be made in writing to the City and specify the alleged reasons why the firm is ineligible and include all available information relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged. The City, during its determination of findings, will notify the challenged party of the allegations and notify both parties in writing of the outcome. The confidentiality of the complainant's identity will be protected as provided in 49 CFR Section 26.109(b). If the City determines first, that there were not reasonable grounds presented in the complaint sufficient to justify an inquiry, then the City will notify the complainant and the challenged party of this determination and the reasons for it. During the pendency of any complaint, the presumption that the challenged party is a socially and economically disadvantaged will remain in effect.

1.4. Joint Ventures

Bidders/proposers may develop joint venture agreements as an instrument to provide participation by DBEs in contract work. A joint venture may consist of any combination of DBEs and non-certified firms as long as one member is a DBE.

A. The joint venture may be eligible for DBE participation credit towards the Contract Specific Goals only if:

1. The DBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;
2. The DBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;
3. Each joint venture partner executes the bid/contract to the City; and
4. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items 1, 2, and 3 above in this Paragraph A.

B. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

The joint venture may receive DBE credit for work performed by the DBE joint venture partner(s) equal to the value of work performed by the DBE with its own forces for a distinct, clearly defined portion of the work.

The Chief Procurement Officer may also count the dollar value of work subcontracted to other DBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

C. Schedule B: DBE Affidavit of Joint Venture

Where the bidder/proposer's Compliance Plan includes the participation of any DBE as a joint venture partner, the bidder/proposer must submit with its bid or proposal a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the DBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the DBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

1. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;
2. Work items to be performed by the DBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;
3. Work items to be performed under the supervision of the DBE joint venture partner; and
4. The DBE's commitment of management, supervisory, and operative personnel to the performance of the contract.

Vague, general descriptions of the responsibilities of the DBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the DBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

D. DBE Participation Level in Joint Venture

Credit for participation by DBEs in joint ventures with non-DBEs does not require a minimum participation of 51 percent in venture ownership and control on the part of the DBE. Credit is based on the percentage of the work performed by the DBE's own forces. See Section 1.5, "Counting DBE Participation Toward the Contract DBE Participation Goal").

NOTE: The City requires that whenever a joint venture submits a bid/proposal as prime contractor, each joint venturer must separately sign the bid/proposal to the City on the pages marked TO BE EXECUTED BY A CORPORATION; TO BE EXECUTED BY A PARTNERSHIP; and/or TO BE EXECUTED BY A SOLE PROPRIETOR as applicable.

1.5. Counting DBE Participation Toward The Contract DBE Participation Goal

When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward the DBE Participation Goal, as described in 49 CFR 26.55.

Refer to this section when preparing the DBE compliance plan and completing Schedule D for guidance on what value of the participation by DBEs will be counted toward the stated DBE Participation Goal. The "Percent Amount of Participation" depends on whether and with whom a DBE subcontracts out any portion of its work and other factors.

Expenditures to a DBE contractor or subcontractor may be counted only if the DBE is performing a "commercially useful function" on the contract. The term "commercially useful function" is defined in 49 CFR 26.55(c). 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, the City will rebuttably presume that the DBE is not performing a commercially useful function.

A contractor (and bidder/proposers in their proposals) may count only the following toward the Contract DBE Participation Goal and should report only the following to the Chief Procurement Officer:

A. **The value of the work actually performed by a DBE**, as described below:

1. For construction contracts and other contracts not covered by A.2., below:

The entire amount of that portion of a contract that is performed by the DBE's own forces. Include 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). (See 49 CFR 26.55(a)(1).)

2. For contracts involving the provision of "bona fide services" (such as professional, technical, consultant or managerial services), or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract:

The entire amount of fees or commissions charged by a DBE for providing a bona fide service, provided that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The determination of whether the fee is reasonable and not excessive will be made by the City. (See 49 CFR 26.55(a)(2).)

3. When a DBE subcontracts part of the work of its contract to another firm:

The value of the subcontracted work may be counted toward the Contract DBE Participation Goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward the Contract DBE Participation Goal. (See 49 CFR 26.55(a)(3).)

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 is counted towards the Contract DBE Participation Goal. (See 49 CFR 26.55(b).)

C. **Materials and Supplies:** Regarding expenditures with a DBE for materials or supplies:

1. If the materials or supplies are obtained from a DBE "manufacturer," as that term is described in 49 CFR 26.55(e)(1), 100 percent of the cost of the materials or supplies. 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 in the specifications.
2. If the materials or supplies are purchased from a DBE "regular dealer," as that term is described in 49 CFR 26.55(e)(2), 60 percent of the cost of the materials or supplies.
3. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the 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 materials or supplies required on a job site, provided that the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of materials and supplies themselves.

The City shall determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.

D. **Trucking Firms:** If the DBE manages and supervises the entire trucking operation for which it is responsible on a particular contract and the DBE itself owns and operates at least one fully licensed, insured and operational truck used on the contract and all leased trucks display the name and identification number of the DBE, then:

1. The total value of the transportation services a DBE provides on the contract using trucks it owns, insures and operates using drivers it employs.
2. The total value of the transportation services a DBE provides on the contract using trucks leased from another DBE trucking firm, including an owner-operator who is certified as a DBE trucking firm, but only if the lease indicates that the DBE lessee has exclusive use of and control over the truck, or, if the truck is used for work for others with the DBE lessee's consent, then the lease must give the DBE lessee absolute priority over its use.
3. Only the value of the fee or commission the DBE receives under a lease arrangement with non-DBE firms for the lease of trucks used to provide transportation services on the contract but only if the lease indicates that the DBE has exclusive use of and control over the truck, or, if the truck works for others with the DBE's consent, then the lease must give the DBE absolute priority over its use.

E. **Other Considerations:**

1. Firm Not Currently Certified: If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, subpart D, at the time of execution of the contract, do not count or report the firm's participation, except as provided in 49 CFR 26.87(i).
2. Firm Whose Eligibility Has Been Removed: Do not report the dollar value of work performed under a contract with a firm after it has ceased to be certified.
3. Payment: Do not report the participation of a DBE subcontractor until the amount to be counted toward the goal has been paid to the DBE.

4. Area of Specialty: Only the value of the dollars paid to the DBE firm for work that it performs in its Area of Specialty in which it is certified counts toward the DBE Participation Goal.

1.6. Procedure To Determine Bid/Proposal Compliance

The following Schedules and documents constitute the bidder's/proposer's DBE proposal, and must be submitted at the time of submission of proposals unless stated otherwise:

1.6.1. Schedule B: Affidavit of DBE/Non-DBE Joint Venture

Where the bidder/proposer's DBE proposal includes the participation of any DBE as a joint venturer prime or subcontractor, the bidder/proposer must submit, together with its bid/proposal, a Schedule B: Affidavit of DBE/Non-DBE Joint Venture with an attached copy of the joint venture agreement proposed among the parties. See Section 1.4 above, "Joint Ventures," for detailed requirements.

1.6.2. Schedule C, C-1 or C-3: Letter of Intent to Perform as a Subcontractor, Consultant, Subconsultant or Material Supplier

Bidder/proposer must submit a Schedule C, C-1 or C-3, for each DBE included on its Schedule D, D-1, or D-3) (including any DBE joint venture partners), signed by the respective DBE firm. Schedule C and D must be used for contracts for construction work, and Schedule C-1 and Schedule D-1 for all other contracts, except for task order based contracts, where Schedule C-3 and Schedule D-3 must be used instead.

Each Schedule C, C-1 or C-3 must accurately detail the work to be performed by the DBE firm and the agreed rates and prices to be paid. Each Schedule must specify the percentage of the dollar value of the DBE's subcontract that will be sublet to non-DBE and DBE contractors and be signed and dated by the DBE. Each Schedule must also include a separate sheet as an attachment on which the DBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the DBE in its Area of Specialty. If a facsimile copy of Schedule C, C-1 or C-3 has been submitted with the bid or proposal, an executed original Schedule C-1 must be submitted promptly by the bidder/proposer for each DBE included on the Schedule D, D-1 or D-3 after the date of bid or proposal opening.

Failure to submit any Schedule C, C-1, or C-3 as required by this Section will result in a Chief Procurement Officer's determination that a bid or proposal is "non-responsive." The Chief Procurement Officer has the discretion to apply additional suitable sanctions against any bidder/proposer who fails to comply with these requirements. Appropriate sanctions may include, without limitation, forfeiture of the bidder/proposer's bid deposit, rejection of the bidder/proposer's bid, or suspension of the bidder/proposer's eligibility to enter into future contracting opportunities with the City.

1.6.3. Schedule D, D-1 or D-3: Affidavit of Prime Contractor Regarding DBEs

Bidders/Proposers must submit at the time specified in the request for proposals, a completed Schedule D or D-1 (or for Task Order based contracts, Schedule D-3, which must be submitted at the time specified in the request for task order proposals) committing them to the utilization of each listed DBE firm (*but see*, Section 1.7, Good Faith Efforts). The Schedule D, D-1 or D-3 must include the name, address, description of the work to be performed and dollar amount participation of each DBE subcontractor, supplier or consultant.

The bidder/proposer must use "Good Faith Efforts," as that term is described in Section 1.7 to meet the Contract DBE Participation Goal (i.e., the specific dollar amount of participation by each DBE firm included on its Schedule D-1 or D-3). The total dollar commitment to proposed DBE firms should equal the Contract DBE Participation Goal. Bidders/proposers are responsible for calculating the dollar equivalent of the Contract DBE Participation Goal as a percentage of their proposal. All commitments made by the bidder/proposer's Schedule D, D-1 or D-3 must conform to those presented in the submitted Schedule Cs, C-1s or C-3s.

A contractor may not modify its Compliance Plan after proposal opening except as directed by the Department of Procurement Services to correct minor errors or omissions. Bidders/proposers shall not be permitted to add DBEs after proposal opening to meet the Contract DBE Participation Goals, however, contractors are encouraged to add additional DBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial, documented justification is provided, the bidder/proposer or contractor shall not reduce the dollar commitment made to any DBE in order to achieve conformity between the Schedule Cs/ C-1s/C-3s and Schedule D/D-1/D-3. All terms and conditions for DBE participation on the contract must be negotiated and agreed to between the bidder/proposer or contractor and the DBE prior to submission of the Compliance Plan. If a proposed DBE ceases to be available after submission of the Compliance Plan, the bidder/proposer or contractor must comply with the provisions of Section 1.10, "DBE Substitutions."

1.6.4. Schedule F: Report of Subcontractor Solicitations

All Bidders/Proposers must submit, together with their bid/proposal, a completed Schedule F report containing information on all subcontractors, DBEs and non-DBEs, solicited for participation in the contract. The Schedule F shall include the following subcontractor information:

Contractor name; Address; Contact person; DBE status; Type of work solicited

1.6.5. Letters of Certification

A copy of each proposed DBE firm's Letter of Certification from the IL UCP must be submitted with the bid or proposal if currently certified. All Letters of Certification issued by the IL UCP include a statement of the DBE firm's Area of Specialty. The DBE firm's scope of work, as detailed by its Schedule C, C-1, or C-3 must conform to its stated Area of Specialty.

NOTE: Failure to submit the following information at the time of submission of bids or proposals (or in the case of task order contracts, the time of submission of task order proposals) will render the bid or proposal non-responsive: the names and addresses of DBE firms that will participate in the contract (Schedule D, D-1 or D-3), a description of the work that each DBE will perform (Schedule D, D-1 or D-3), the dollar amount of the participation of each DBE firm participating (Schedule D, D-1 or D-3), written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal (Schedule D, D-1 or D-3), written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment (Schedule C, C-1 or C-3), affidavit of joint venture when a DBE participates in the contract for DBE credit as a joint venturer (Schedule B), report on all subcontractors solicited for participation in the contract (Schedule F) and if the Contract goal is not met, evidence of good faith efforts, as set out in Section 1.7, "Good Faith Efforts".

1.6.6. Procedure

- A. The submittals must have all blank spaces on the Schedule pages applicable to the subject specification filled in correctly.

Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidder/proposers are prohibited.
- B. During the period before award, the submitted documentation will be evaluated. As required under 49 CFR 26.109(c), all participants in the DBE Program, including the bidder/proposer, must give, upon request, earnest and prompt cooperation to the using department and the City's Chief Procurement Officer or his or her authorized delegate in submitting to interviews that may be necessary, or in allowing entry to places of business or in providing further documentation, or in soliciting the cooperation of a proposed DBE in providing such assistance. A bid/proposal may be treated as non-responsive by reason of the determination that the bidder/proposer was found to be unresponsive or uncooperative when asked for further information about the bid/proposal, or that false statements were made in the Schedules.
- C. Bidders/Proposers will not be permitted to modify their DBE proposal except as permitted to do so by the City. All terms and conditions stipulated for prospective DBE sub-contractors or suppliers therefore should be satisfactorily negotiated prior to the submission to the City of the bidder/proposer's DBE commitment as part of the DBE proposal. If circumstances arise, where a proposed DBE becomes no longer available, the process described in Section 1.10, DBE Substitutions, should be followed.
- D. When necessary in the interest of time, the City may treat a bid/proposal as non-responsive instead of granting extended time for a bidder/proposer to replace DBEs named in the DBE proposal that are later determined to be ineligible or unavailable.

1.7. Good Faith Efforts

1.7.1. Demonstration of Good Faith Efforts

In order for a bid/proposal to be responsive, at the time specified in the request for bids/proposals, the bidder/proposer must demonstrate it has made Good Faith Efforts to meet the Contract DBE Participation Goal. The demonstration is made in the form of the documentation described in Section 1.7.2, "Documenting Good Faith Efforts." The bidder/proposer can demonstrate it has made Good Faith Efforts to meet the Contract DBE Participation Goal either by:

- A. Meeting the Contract DBE Participation Goal, as provided in these Special Conditions, and documenting commitments for participation by DBE firms sufficient for this purpose; or

B. Documenting, in the manner described below, adequate Good Faith Efforts to meet Contract DBE Participation Goal. This means bidders/proposers must submit at the time specified in the request for bids/proposals, documentation to show that it took all necessary and reasonable steps to achieve the Contract DBE Participation Goal or other requirements of 49 CFR Part 26, Appendix A, which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the bidder/proposer was not fully successful. The following are examples of documented actions the City may consider to determine whether the bidder/proposer made Good Faith Efforts:

- i. Soliciting through all reasonable and available means (e.g., attendance at pre-bid/proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- ii. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even where the prime contractor might otherwise prefer to perform these work items with its own forces.
- iii. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- iv. Negotiating in good faith with interested DBEs. It is the bidder/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work. A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder/proposer's failure to meet the Contract DBE Participation Goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract within its own organization does not relieve the bidder/proposer of the responsibility to make Good Faith Efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- v. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder/proposer's efforts to meet the Contract DBE Participation Goal.
- vi. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the City or the bidder/proposer.
- vii. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- viii. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

1.7.2. Documentation of Good Faith Efforts

The following 11 types of documentation, as applicable to the situation, will be considered by the Chief Procurement Officer in determining whether the bidder/proposer has made Good Faith Efforts to meet the Contract DBE Participation Goal. The documentation must be submitted at the time of submission of proposals or the proposal will be deemed non-responsive.

- A. A detailed statement of efforts to identify and select portions of work identified in the request for proposals to certified DBE firms. Include copies of attendance logs from pre-bid/proposal meetings, advertisements and written notices, as applicable.
- B. A listing of all DBE firms contacted that includes:
- names, address and telephone numbers of DBE firms solicited;
 - date and time of contact;
 - method of contact (written, telephone, facsimile transmittal, etc.)
 - name of the person contacted.
- C. Copies of letters or any other evidence of mailing that substantiates outreach to DBE vendors that includes:
- project identification and location;
 - classification/commodity of work items for which quotations were sought;
 - date, item and location for acceptance of subcontractor bid proposals;
 - detailed statement which summarizes direct negotiations with appropriate DBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
 - affirmation that good faith efforts have been demonstrated by choosing subcontracting opportunities likely to achieve the Contract DBE Participation Goal by not imposing any limiting conditions which were not mandatory for all subcontractors; or denying the benefits ordinarily conferred on DBE subcontractors for the type of work that was solicited.
- D. Copies of proposed plans for selecting portions of the work to be performed by DBEs in order to increase the likelihood that the Contract DBE Participation Goal will be achieved.
- E. Evidence that the bidder/proposer negotiated in good faith with interested DBEs.
- F. Evidence that the bidder/proposer did not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- G. Evidence that the bidder/proposer made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance, as required by the City or the bidder/proposer.
- H. Evidence that the bidder/proposer made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- I. Evidence that the bidder/proposer has provided timely notice of the need for subcontractors to at least 50 percent of the DBEs listed in the City's Directory as being certified in the applicable Areas of Specialty. Proof of notification (e.g. certified mail receipt or facsimile transmittal receipt) prior to the date a bidder/proposer's DBE proposal is due is required for any proposal to be deemed responsive. The Chief Procurement Officer may contact the certified DBEs for verification of notification.
- J. Evidence that subcontractor participation is excessively costly. Subcontractor participation will be deemed excessively costly when the DBE subcontractor proposal exceeds the average price quoted by more than 15 percent. In order to establish that a subcontractor's quote is excessively costly, the bidder/proposer must provide the following information at the time specified in the request for proposals:
1. A detailed statement of the work identified for DBE participation for which the bidder/proposer asserts the DBE quote(s) were excessively costly (in excess of 15 percent higher).
 - (A) a listing of all potential subcontractors contacted for a quotation on that work item;
 - (B) prices quoted for the subcontract in question by all such potential subcontractors for that work item.

OR

2. Other documentation that demonstrates to the satisfaction of the Chief Procurement Officer that the DBE proposals are excessively costly, even though not in excess of 15 percent higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
 - (A) the City's estimate for the work under a specific subcontract;
 - (B) the bidder/proposer's own estimate for the work under the subcontract;
 - (C) an average of the bona fide prices quoted for the subcontract;
 - (D) demonstrated increase in other contract costs as a result of subcontracting to the DBE or other firm.
- K. Copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. This must be included in the documentation of Good Faith Efforts whenever a non-DBE subcontractor is selected over a DBE for work on the contract.

Note: The City reserves the right to modify this procedure when deemed appropriate.

1.8. Reporting

- A. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the DBEs included in their approved DBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.
 - B. The contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic audit. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.
 - C. Once the prime contractor has reported payments made to each DBE, including zero dollar amount payments, the DBE will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.
 - D. All subcontract agreements between the contractor and DBE firms or any first tier non-certified firm and lower tier DBE firms must contain language requiring the DBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.
- Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: <https://chicago.mwdbe.com>
- E. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to DBE participation and the status of any DBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.
 - F. The contractor shall maintain records of all relevant data with respect to the utilization of DBEs retaining these records for a period that is the longer of five years or as required by relevant retention schedules after final acceptance of the work. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.
 - G. The contractor must make available upon request a copy of all DBE subcontracts. The contractor must ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with the provisions of 49 CFR Part 26.

1.9. Required Assurance

Contractor must comply with, and each subcontract Contractor signs with a subcontractor must include, the following assurance:

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and

administration of DOT- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to, (1) withholding monthly progress payments, (2) assessing sanctions, (3) liquidated damages, and/or (4) disqualifying the Contractor from future bidding as non-responsible.

1.10. DBE Substitutions

A. Arbitrary changes by the bidder/proposer of the commitments earlier certified in the Schedule D, D-1 or D-3 are prohibited. Further, after once entering into each approved DBE subcontract, the bidder/proposer may neither terminate the subcontract, nor reduce the scope of the work to be performed by the DBE, nor decrease the price to the DBE, without in each instance (i) having just cause, including situations where bidder/proposer's contract with the DBE includes termination for convenience; (ii) making Good Faith Efforts to find another DBE subcontractor to substitute for the original DBE (these Good Faith Efforts must be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the Contract DBE Participation Goal); and (iii) receiving the prior written approval of the City in all instances.

Unless the City provides written approval for the substitution of a DBE, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

1. The bidder/proposer must give the Chief Procurement Officer reasons that justify the bidder/proposer's terminating a DBE, reducing the scope of work to be performed by a DBE, or decreasing the price to a DBE. The substitution procedure will be as follows:
 - a) The bidder/proposer/contractor must notify the Chief Procurement Officer as soon as possible in writing of an apparent necessity to reduce or terminate a DBE subcontract and to propose a substitute firm for some phase of work, if needed in order to sustain the fulfillment of the Contract DBE Participation Goal. Prior to submitting notice to the Chief Procurement Officer, bidder/proposer/contractor must give notice in writing to the DBE subcontractor, with a copy to the Chief Procurement Officer, of its intent to request to terminate and/or substitute, and the reason for the request.
 - b) Bidder/proposer/contractor must give the DBE five days to respond to the notice and advise the City and bidder/proposer/contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the bidder/proposer/contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the City may provide a response period shorter than five days.
2. The bidder/proposer/contractor's notification should include the specific reasons for the proposed substitution. Stated reasons which would be acceptable include the following examples:
 - a) The listed DBE subcontractor fails or refuses to execute a written contract;
 - b) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
 - c) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
 - d) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - e) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - f) The City has determined that the listed DBE subcontractor is not responsible;
 - g) The listed DBE subcontractor voluntarily withdraws from the project and provides to the City written notice of its withdrawal;
 - h) The listed DBE is ineligible to receive DBE credit for the type of work required;
 - i) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
 - j) Other documented good cause that the City may determine compels the termination of the DBE subcontractor.

The bidder/proposer/contractor's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will not be acceptable include: A replacement firm has been recruited to perform the same work under terms more advantageous to the prime contractor; issues about performance by the committed DBE were disputed (unless every reasonable effort has already been made to have the issues resolved or mediated satisfactorily); a DBE has requested reasonable price escalation which may be justified due to unforeseen circumstances; or the bidder/proposer seeks to terminate a DBE it relied upon to obtain the contract so that the bidder/proposer can self-perform the work for which the DBE subcontractor was engaged.

3. The bidder/proposer/contractor's notification should include the name, address and principal official of any proposed substitute DBE and the dollar value and scope of work of the proposed subcontract. Attached should be all the same DBE affidavits, documents, and Letter of Intent which are required of bidders, as enumerated in Section, Procedure to Determine Bid Compliance.

4. The City will evaluate the submitted documentation, and respond within 15 working days to the request for approval of a substitution. The response may be in the form of a request for more information, or a request for an interview to clarify or mediate the problem. In the case of an expressed emergency need to receive the necessary decision for the sake of job progress, the City will instead respond as soon as practicable.

4. If termination of a DBE subcontractor is approved, or a DBE subcontractor fails to complete its work on the contract for any reason, bidder/proposer/contractor must make Good Faith Efforts to replace that subcontractor. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract. The good faith efforts shall be documented by the bidder/proposer. If the City requests documentation, the bidder/proposer/contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the bidder/proposer/contractor. The City shall provide a written determination to the bidder/proposer/contractor stating whether or not good faith efforts have been demonstrated.

5. Actual substitution of a replacement DBE to fulfill the Contract DBE Participation Goal may not be made before City approval is given of the acceptability of the substitute DBE. A subcontract with the substitute DBE subcontractor must be executed within five working days following the City's approval, and a copy of the DBE subcontract with signatures of both parties to the agreement should be submitted immediately to the City.

B. The City will not approve extra payment for escalated costs incurred by the bidder/proposer/contractor when a substitution of subcontractors becomes necessary for the bidder/proposer/contractor to comply with the Contract DBE Participation Goal.

C. The Chief Procurement Officer will make the determination of whether the bidder/proposer/contractor has exercised Good Faith Efforts.

1.11. Non-Compliance

A. Each of the following constitutes a material breach of this contract and entitles the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity:

1. failure to make good faith efforts to satisfy the Contract DBE Participation Goal proposed by the bidder/proposer and accepted by the City; and
2. the contractor, a subcontractor or supplier is disqualified as a DBE, where the status was a factor in the contract award and was misrepresented by the contractor.

If the contractor is determined by the City not to have been involved in any misrepresentation of the status of a disqualified subcontractor or supplier, the contractor must discharge the disqualified subcontractor or supplier and, if possible, identify and engage a qualified DBE as its replacement. Furthermore, contractor's continued eligibility to enter into future contracting arrangements with the City may be jeopardized as a result of non-compliance. The City may withhold payments due to the contractor until corrective action is taken.

B. The contractor's failure to comply with the Contract DBE Participation Goal proposed by the bidder/proposer and accepted by the City, or failure to comply with the provisions of Section IX, DBE Substitutions, will entitle the affected DBEs to recover from the contractor damages suffered by these DBEs as a result of such under- or non-utilization, but this provision will not apply to the extent the under- or non-utilization occurs pursuant to Good Faith Efforts approved by the City. See Section 1.12, "Arbitration."

For contracts funded in whole, or in part, by Federal Highway Administration, Federal Transit Administration, Illinois Department of Transportation: When the contract requirements are completed, in the event that the City has determined that the bidder/proposer/contractor failed to comply with the Contract DBE Participation Goal proposed by the bidder/proposer/contractor and accepted by the City, the City will thereby be damaged in the failure to provide the benefit of participation to DBEs to the degree set forth in the Special Conditions. Therefore, in such case of non-compliance, the City will deduct as liquidated damages cumulative amounts computed as follows:

For each one percent (or fraction thereof) of shortfall toward the Contract DBE Participation Goal, one percent of the base bid for this contract shall be surrendered by the bidder/proposer to the City of Chicago in payment as liquidated damages.

1.12. Arbitration (FAA Funded Contracts)

A. The contractor hereby agrees that any disputes between the contractor and any affected DBE regarding damages as a result of contractor's under- or non-utilization of the DBE on any contract funded, in whole or in part, by the Federal Aviation Administration may, at the sole discretion of the DBE, be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by a prevailing DBE in accordance with applicable City regulations. This provision is intended for the benefit of any DBEs affected by under- or non-utilization and grants them specific third party beneficiary rights. In cases where deemed appropriate by the Contract Compliance Administrator, notification of a dispute by the affected DBE or prime contractor may lead to the withholding of final contract payouts until the City receives a copy of the final arbitration decision. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including those contained in a subcontract, suborder or communicated orally between a contractor and a DBE.

B. If requested by the DBE, the DBE has the right to arbitrate. A DBE desiring to arbitrate must contact the contractor in writing to initiate the arbitration process. Except as otherwise agreed to in writing by the affected parties, subject to the limitation contained in the last sentence of the previous paragraph, within 10 days of the contractor receiving notification of the intent to arbitrate from the DBE the above-described disputes must be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 1840, Chicago, Illinois 60601-7601. [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations must be initiated by the DBE filing a demand for arbitration with the AAA; must be conducted by the AAA; and held in Chicago, Illinois.

C. All fees of the arbitrator are the initial responsibility of the DBE; the arbitrator, however, is authorized to award reasonable expenses, including attorney's and arbitrator fees, as damages to a prevailing DBE.

D. The DBE must send the City a copy of the "Demand for Arbitration" within 10 days after it is filed with the AAA. The DBE also must send the City a copy of the decision of the arbitrator within 10 days of receiving the decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

1.13. Prime Contractor Assistance

Prime contractors should themselves assist DBEs in overcoming barriers to program participation. The following instruments of assistance, for example, should be used as applicable:

- Developing solicitations of sub-contract bids so as to increase potential DBE participation. This can take the form of breaking down large subcontracts into smaller ones, and of issuing notice of solicitations in a timely manner.
- Providing technical assistance and guidance in the bidding, estimating and scheduling processes.
- Considering purchasing supplies and/or leasing the required equipment for a job, then subcontracting only for the expertise required to perform the work.
- Providing accelerated payments or establishing pro-rated payment and delivery schedules so as to minimize cash flow problems faced by small firms.
- Providing, waiving or reducing subcontractor bonding requirements; allowing stage bonding (bonding carried over from one project stage to the next).
- Providing a pre-bid conference for potential sub-contractors.

In addition to the employment of DBEs, the bidder/proposer should consider the utilization of DBEs in fields indirectly related to the contract, such as banking, office equipment sales, vehicles sales, mechanical repair, legal and accounting services, building security, graphics and advertising, etc.

1.14. Record Keeping

The Contractor shall maintain records of all relevant data with respect to the utilization of DBEs, retaining these records for a period that is the longer of five years or as required by relevant retention schedules after final acceptance of the work. Full access to these records shall be granted to the City of Chicago, Federal or State authorities in this project, the U. S. Department of Justice, or any duly authorized representatives thereof.

1.15. DBE Financial Institutions

As of January 2014 Illinois has only one certified DBE financial institution, Seaway National Bank.

Other Minority and/or Female Owned Institutions:

- Banco Popular
- First Commercial Bank
- Illinois Federal Savings Bank

1.16. Assistance Agencies

Small business guaranteed loans, surety bond guarantees; 8(a) certification:

U. S. Small Business Administration
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert Conner
(312)353-4528

S.B.A. Bond Guarantee Program/Surety Bonds
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
(312)353-7331

S.B.A. Procurement Assistance
500 W. Madison Street, Suite 1250
Chicago, Illinois 60601
Attention: Robert P. Murphy, Assistant Regional Administrator
(312)744-1895

City of Chicago Web site:

www.cityofchicago.org/purchasing

Information on DBE availability in the manufacturing, sales or supplies, and related fields (direct assistance from 42 regional affiliates located throughout the U.S.):

National Minority Supplier
Development Council, Inc.
1040 Avenue of the Americas – 2nd Floor
New York, New York 10018
Attention: Harriet R. Michel
(212)944-2430

Chicago Minority Business Development Council
11 South LaSalle Street – Suite 850
Chicago, Illinois 60603
Attention: Tracye Smith
(312)263-0105

1.17. Equal Employment Opportunity

Compliance with DBE requirements will not diminish or supplant Equal Employment Opportunity and Civil Rights provisions as specified elsewhere in this contract and as they relate to prime contractor and subcontractor obligations.

