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## **DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN**

It is the policy of the U.S. Department of Transportation that socially and economically disadvantaged and women's business enterprises (DBEs), as defined in Title 49, Code of Federal Regulations, Part 26, shall be afforded an opportunity to participate, to an extent reflective of their availability in the performance of contracts financed in whole or part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR, Part 26, apply to this agreement.

SORTA sets overall Disadvantaged Business Enterprise (DBE) goals for work to be performed under its contracts, including construction activity, procurement of common goods and services, and personal service contracts. While the expected percentage of certified DBE utilization may vary from contract to contract due to the availability of DBEs in any given line of work, SORTA believes the overall goals to be realistically obtainable.

Participants in this procurement agree to ensure that small and disadvantaged businesses have an opportunity to participate in the performance of contracts and subcontracts under this agreement, to an extent reflective of their availability in the community, whether or not a specific goal for participation was set for this solicitation. In this regard, the bidders shall take all necessary and reasonable steps in accordance with SORTA's Disadvantaged Business Enterprise program to ensure that small and disadvantaged businesses have such an opportunity to compete for the performance of contracts. Neither the bidders nor the selected contractor shall discriminate on the basis of race, color, national origin or sex in the performance of this contract.

### **III. BID/PROPOSAL REQUIREMENTS, TERMS AND CONDITIONS**

In addition to any other requirements contained in this Request for Proposals, the proposal must include a representation that:

1. The proposer has met the goal established by SORTA for this procurement, or
2. The proposer has made a good faith effort to attain the level of DBE participation sought by SORTA for this procurement

Each proposer must include a statement of the level of DBE participation attained through such effort in the attachment labeled "DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION". This submittal is regarded as a matter of responsiveness. Failure to make these submittals will serve to disqualify the proposal as non-responsive to this solicitation.

Each proposer should also prepare a complete DBE Participation Plan that sets forth the extent of DBE involvement in this procurement. These materials are to be provided upon request and will be considered in determining responsibility. DBE Participation Plans shall include the DBE Participation Schedule, which includes the following:

- a) Names and addresses of the DBE entities that will participate in the contract.
- b) The dollar amount of the participation of each named DBE.
- c) A description of the work each named DBE will perform.
- d) Verification of Certification and Letter of Intent from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.

If the DBE goal is not met, the Bidder/Proposer must document in the attached form entitled "Good Faith Effort Documentation", the good faith efforts it made to include DBE participation in the contract prior to submitting the bid. The following standards shall be applied in assessing the responsibility of the DBE plan submitted:

- a) Whether the participation plan contains capable currently certified DBE firms.
- b) Whether the firms listed in the plan are performing a commercially useful function.
- c) Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project; and
- d) Whether the plan exhibits a likelihood of goal attainment.
- e) Whether the prime/sub relationships are firm, i.e., whether conditional subcontractors have been entered.

Only DBE entities certified under the State of Ohio Uniform Certification Program ([www.ohioucp.org](http://www.ohioucp.org)) are eligible for inclusion in a plan. Consult the DBE Directory, which is available on the above website. Applications for Ohio Department of Transportation UCP Certification must be submitted in advance of bid date. The DBE must have submitted its application for certification prior to bid submittal and be certified prior to contract award; by Federal regulation.

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Bidders/Proposers should not rely upon anticipated approval of the certification applications submitted by its proposed DBEs, since DBEs which are not certified by time of award will not be credited toward the goal, and failure to obtain certification might change the prime Bidder/Proposer's status from compliant to non-compliant. However, substitution of DBE entities appearing in a plan may be permitted where SORTA's DBE Officer (DBELO) determines that such substitution will not result in an abuse of the DBE Program. The burden of demonstrating the propriety of such substitution lies with the Bidder/Proposer seeking such substitution.

SORTA may at any time prior to award seek clarification or additional information bearing upon Bidder/Proposer responsibility in respect of DBE involvement with this procurement. SORTA requires that such information should be submitted within three (3) business days of the date a request is made.

The Bidder/Proposer's commitment to a specific goal for DBE utilization as detailed in its DBE Plan shall constitute a presumption that good faith efforts to meet the DBE goal by subcontracting to or undertaking to joint venture with DBE firms have been made. If the Bidder/Proposer fails to meet the goal, it will carry the burden of furnishing sufficient documentation to demonstrate its good faith efforts. The standard by which SORTA will determine whether the efforts made by a Bidder/Proposer were good faith efforts is whether such efforts could reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement. In reaching this decision, SORTA may consider all efforts advanced by the Bidder/Proposer as well as the following:

- a) Did the Bidder/Proposer attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
- b) Did the Bidder/Proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
- c) Did the Bidder/Proposer provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively?
- d) Did the Bidder/Proposer follow up with the DBE firms interested in participating?
- e) Did the Bidder/Proposer select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?
- f) Did the Bidder/Proposer provide adequate information about plans, specifications, and/or contracting requirements?
- g) Did the Bidder/Proposer negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
- h) Did the Bidder/Proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
- i) Did the Bidder/Proposer effectively use the services of available minority and female organizations, contractors' groups, state, and local offices, etc., that have knowledge of available DBE firms or the names or organizations to locate such firms?

In the event a contract is awarded as a result of this procurement, the DBE Participation Plan submitted by the successful Bidder/Proposer and the terms, conditions and requirements contained in this notice shall become an integral part of the contract, binding the Contractor to full and faithful performance in accordance with said plan. SORTA shall not award a contract to a Bidder/Proposer who has not either committed to full attainment of the established goal or demonstrated good faith efforts to attain the goal prior to submitting a bid.

During the performance of contract and for a period of up to three (3) years following completion of the contract work, SORTA may initiate reviews for compliance with the requirements of SORTA's DBE Program and the Contractor's DBE Participation Plan. Such reviews may involve a review of monthly statements, desk audits and/or onsite reviews. Where a Contractor is found by SORTA to have failed to comply with the requirements of the DBE Program or the Contractor's DBE Participation Plan, the Contractor will be required to take corrective action. If corrective action is not promptly taken by the offending Contractor, the following sanctions may be imposed (singly, in any combination and in addition to any other remedies provided by law or equity):

- a) SORTA may withhold all further payments under the contract.
- b) The Contractor may be ordered to stop work.
- c) The contract may be terminated for breach.
- d) Suspension or debarment proceedings may be commenced in accordance with 49 CFR, Part 29.
- e) The Director of Procurement may find the defaulting contractor non-responsible in respect to other solicitations for a stated period.
- f) The contract payments may be reduced by an amount equal to that designated in the DBE plan for DBE participation.
- g) Any performance bond(s) for the contract may be enforced.

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h) The Contractor will keep records and documents for three (3) years following performance of this contract in accordance with this notice and the applicable terms and conditions of the contract. Such records and, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of SORTA and will be submitted to SORTA upon request, together with any other compliance information which such representative may require.

If, at any time, the U.S. Department of Transportation or SORTA has reason to believe that any person or firm has willfully or knowingly provided incorrect information or made a false statement, it may refer the matter to the General Counsel of the Department of Transportation, which may initiate debarment proceedings in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as they deem appropriate.

Bidders/Proposers for this solicitation agree to be bound by all the requirements, terms and conditions of this notice. Nothing in this notice shall be interpreted to nullify or modify any other provision of the solicitation or resultant contract. Agreements between a Bidder/Proposer and a DBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.

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**DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE  
UTILIZATION**

***THIS PAGE MUST BE COMPLETED BY PRIME BIDDER TO INDICATE THE AMOUNT (PERCENTAGE) OF  
DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.***

The undersigned, as a representative of the entity, \_\_\_\_\_, submitting a bid for \_\_\_\_\_, titled \_\_\_\_\_ hereby acknowledges that the DBE goal established for this project is \_\_\_\_\_ %.

Note: Bidder or Proposer shall make one of the two certifications noted below:

1. The Bidder/Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is **stated within the solicitation** and represents attainment of the DBE participation goal. Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation are attached.
2. The Bidder/Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is **stated within the solicitation**. However, this level of DBE participation is less than the goal established for this project. The Bidder/Proposer has attached:
  - a. the Schedule of DBE Participation showing the level of DBE participation the Bidder/Proposer has been able to obtain, supplemented with Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation; and,
  - b. documentation of the Bidder/Proposer's good faith efforts to achieve the goal established for this project. This documentation shall include Certificates of DBE Unavailability for each firm contacted by the prime Bidder/Proposer which will not be participating in performance of the contract. The documentation of the these efforts is discussed in greater detail within this packet.

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Date

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Representative of Bidder/Proposer  
Signature

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Title

(TO BE SUBMITTED WITH BID)

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## DBE AFFIDAVIT

**THIS PAGE MUST BE COMPLETED BY EACH CERTIFIED DISADVANTAGED BUSINESS AND NOTARIZED.**

I hereby declare and affirm that I am the \_\_\_\_\_  
(title)

and duly authorized representative of the \_\_\_\_\_  
(firm)

Whose address is \_\_\_\_\_.

I may be contacted at \_\_\_\_\_ or \_\_\_\_\_.  
(Telephone Number) (Email Address)

I HEREBY DECLARE AND AFFIRM THAT MY FIRM IS A DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFIED BY THE OHIO UNIFORM CERTIFICATION PROGRAM AND THAT I WILL PROVIDE INFORMATION AND/OR THE CERTIFICATION TO DOCUMENT THIS FACT.

I DO SOLEMNLY SWEAR OR DECLARE AND AFFIRM THAT THE CONTENTS OF THE FOREGOING STATEMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Affiant)

\_\_\_\_\_  
(Date)

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the person described in the foregoing Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

\_\_\_\_\_  
(SEAL)

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## LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR

To: \_\_\_\_\_ Prime Bidder or Proposer

\_\_\_\_\_ Address

\_\_\_\_\_ City/State

I am the (Title) \_\_\_\_\_ and duly authorized representative of the (Firm Name) \_\_\_\_\_ which intends to perform work for the above project operating as (Check one box only) a(n)  Individual,  Company,  Corporation, organized and existing under the law of the State of \_\_\_\_\_, or a  Proprietorship,  Partnership, or  Joint Venture consisting of: \_\_\_\_\_.

The firm that I represent is a Disadvantaged Business Enterprise (DBE)  certified by the Ohio UPC with a certification date of \_\_\_\_\_, 20\_\_\_\_; **or**  the firm submitted its application for certification to the Ohio UPC on \_\_\_\_\_, 20\_\_\_\_, but has not yet received a certification decision.

The undersigned is prepared to perform the following described work in connection with the above project, (specify in appropriate detail particular work items or parts thereof to be performed):

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at the following percentage: \_\_\_\_\_.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>Type of Work and Items</u>	<u>Work Hours Involved</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

I further represent that \_\_\_\_\_ percent (\_\_\_\_%) of the dollar value of my subcontract will be performed by subcontractors and/or suppliers, which are not certified by SORTA as a Disadvantaged Business Enterprise.

The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with SORTA. Respectfully submitted, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

(DBE Firm Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
(Signature) \_\_\_\_\_  
(Name Typed) \_\_\_\_\_  
(Title) \_\_\_\_\_

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## **DISADVANTAGED SUBCONTRACTOR GOOD FAITH EFFORT DOCUMENTATION EVALUATION FORM**

**Instructions to bidders/proposers:** This form **must be completed** and submitted with the subject proposal or bid. Any unsuccessful efforts made to secure a subcontractor should be noted on the Small and Disadvantaged Business Unavailability Certification (separate attachment) and backup should be provided to support the good faith efforts made. The Disadvantaged Business Enterprise Unavailability Certification form is not required if the bidder/proposer was successful in obtaining participation as either a prime contractor or subcontractor. Please note that efforts to secure a contract with a subcontractor cannot be made after the submittal of the bid/proposal.

Date \_\_\_\_\_

Name of Prime  
Bidder/Proposer \_\_\_\_\_

Name of Contact \_\_\_\_\_

Address \_\_\_\_\_

Phone/Fax and  
E-mail \_\_\_\_\_

DBE Goal \_\_\_\_\_ %

Bidder/Proposer Commitment: \_\_\_\_\_

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Submitted By

Date Submitted

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Reviewed by (Diversity and Inclusion Staff)

Date Reviewed

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## **DISADVANTAGED BUSINESS SUBCONTRACTOR UNAVAILABILITY CERTIFICATION**

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Instructions to bidders: Completion and submission of this form is required when efforts were made to secure a subcontractor, but were unsuccessful. A separate form must be completed for each firm contacted. Backup documentation should be attached to demonstrate good faith efforts to obtain a subcontractor.

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_, (Name of Signer) (Title of Signer) (Name of Bidder/Proposer)

certify that on \_\_\_\_\_, 20\_\_\_\_\_, I contacted the following Contractor to obtain a bid/proposal for work items to be performed on SORTA's Contract No.\_\_\_\_\_.

**DBE Contractor****Work Items Sought****Form of Bid Sought**

(i.e., Unit Price Materials &  
Labor, Labor Only, etc.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
  
*Firm Name* \_\_\_\_\_ was offered an opportunity to propose on the above-identified work on  
*Date* \_\_\_\_\_, but declined the offer.

To the best of my knowledge and belief, said subcontractor was unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid/proposal for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2.  PLEASE CHECK IF ADDITIONAL DOCUMENTATION HAS BEEN ADDED AND LIST EACH ATTACHMENT  
BELOW:**

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1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_

The above statement is a true and accurate account of why \_\_\_\_\_ did not  
submit a bid/proposal on this project. (Name of Firm)

Signature: \_\_\_\_\_

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

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The following applies to good faith effort determinations:

1. Good faith efforts are those that could reasonably be expected to result in small and disadvantaged business participation attainment by a bidder or proposer who aggressively and actively seeks to obtain certified small and disadvantaged business participation.
2. SORTA will examine the quantity and intensity of the efforts as well as the type of actions taken. Efforts that are merely pro forma are not sufficient, even though they may sincerely motivated.
3. Certified small and disadvantaged businesses are businesses that are certified Minority Business Enterprises (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (SMALL AND DISADVANTAGED BUSINESS) or Small Business Enterprise (SBE).

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**SORTA's criteria for determining whether or not adequate effort was made follows the Bid/Proposal solicitation document, which may include, but is not limited to the following:**

- 1) Did the bidder/proposer attend any scheduled pre-solicitation or pre-bid meetings to inform disadvantaged businesses of contracting and subcontracting opportunities?
- 2) Did the bidder/proposer advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
- 3) Did the bidder/proposer provide written notice to a reasonable number of specific disadvantaged businesses that their interest in the contract was being solicited, in sufficient time to allow the disadvantaged businesses to participate effectively?
- 4) Did the bidder/proposer follow up with disadvantaged firms interested in participating?
- 5) Did the bidder/proposer select portions of work to be done by disadvantaged businesses (including dividing contracts into economically feasible units to facilitate participation)?
- 6) Did the bidder/proposer provide adequate information about plans, specifications, and/or contracting requirements?
- 7) Did the bidder/proposer negotiate in good faith with interested disadvantaged businesses not rejecting disadvantaged businesses as unqualified without sound reasons?
- 8) Did the bidder/proposer make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
- 9) Did the bidder/proposer effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc. that have knowledge of available firms or the names of organizations to locate such firms?

### 1. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN

**INSTRUCTIONS TO BIDDERS:** This form must be completed and submitted with the bid or proposal. All firms (prime contractors and subcontractors), regardless of small and disadvantaged business status, must be listed. Completion of this form is considered an issue of responsiveness. This form should list PERCENTAGES ONLY. No dollar value should be listed.

Name of Prime Contractor	
Title of Solicitation	

	Name of BUSINESS	Disadvantaged Business (DBE)? (Y/N)	Address	Contact Person & Telephone	Scope of Work	% of Dollar Value of Work
1.						
2.						
3.						
4.						
5.						
6.						
7.						
Total Disadvantaged Business Percentage of Total Bid/Proposal Amount					%	

The undersigned will enter into formal agreements with the Disadvantaged Businesses listed above for work in this schedule conditioned upon the award of a contract by the Southwest Ohio Regional Transit Authority (SORTA)

Signature of Prime Bidder/Proposer Representative	Title	Phone Number	Email	Date
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