

**PLAN MAINTENANCE, UPDATES AND SUPPORT  
REQUEST FOR QUALIFICATIONS (RFQ)  
for Consultant Services**

*Issued by the SEDA-Council of Governments*

*May 13, 2020*



**The SEDA-Council of Governments (SEDA-COG) Metropolitan Planning Organization is soliciting Statements of Qualifications to provide “Consulting Services” on an on-call, as-needed basis for a wide range of support services related to transportation planning, with particular attention to maintenance, updates and support of existing plans.**

**This packet contains information on submitting qualifications, including specific requirements, procedure, timing, content and organization of the qualifications package, and evaluation criteria.**

**Statements of Qualifications must include one original and five copies. Statements are due no later than 4:00 PM on June 22, 2020, and must be mailed or delivered to:**

**James Saylor  
Transportation Planning Program Director  
SEDA-Council of Governments  
201 Furnace Road  
Lewisburg, PA 17837**

**Questions on the RFQ may be directed to James Saylor at 570-524-4491, or [jsaylor@seda-cog.org](mailto:jsaylor@seda-cog.org).**

## **Compliance with Regulations**

SEDA-COG is committed to compliance with the nondiscrimination requirements of applicable civil rights statutes, executive orders, regulations, and policies, including Title VI of the Civil Rights Act of 1964, and 49 CFR Part 26. SEDA-COG hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this agreement, minority business enterprises will be afforded full opportunity to submit bids in response to the invitation, and will not be discriminated against on the grounds of race, color, national origin or sex in consideration of an award.

## **OVERVIEW**

### **Background**

The SEDA-COG Metropolitan Planning Organization (MPO) is the official transportation planning organization for eight (8) Pennsylvania Counties (Clinton, Columbia, Juniata, Mifflin, Montour, Northumberland, Snyder and Union). Through the transportation planning program, the MPO strives to maintain a process for making transportation investments for the region in a way that is cooperative, continuous and comprehensive.

### **Request**

The MPO desires to engage up to three firms to provide consulting services in support of transportation planning in separate Consultant Services contracts for work to be carried out on an on-call, as-needed basis. These services are expected to include the maintenance, update and support of various required plans for the region. They may also include the development of additional plans or the completion of surveys, studies and analyses required in the completion of ongoing planning processes.

A Scope of Services is included as Appendix A. The RFQ may be obtained from the SEDA-COG website. Alternately, an electronic or printed version of the RFQ may be obtained from SEDA-COG after Wednesday, May 13, 2020 by written or e-mail request to:

**James Saylor**  
**Transportation Planning Program Director**  
**SEDA-Council of Governments**  
**201 Furnace Road**  
**Lewisburg, PA 17837**  
**570-524-4491**  
[jsaylor@seda-cog.org](mailto:jsaylor@seda-cog.org)

All technical questions regarding the RFQ must be submitted electronically via e-mail to [jsaylor@seda-cog.org](mailto:jsaylor@seda-cog.org), by May 22, 2020. Questions submitted through other means will not be answered. Written answers, including any amendments to the RFQ, if required, will be posted on the SEDA-COG website no later than close of business on June 11, 2020. This material will also be emailed on to each firm that requests the information via e-mail.

Firms are invited to submit a Statement of Qualifications package in response to this RFQ. Individual firms are encouraged to collaborate with other firms to form proposed On-call Consultant Services teams. Prospective firms or teams must demonstrate that they are capable of performing the range of potential work tasks described in the Scope of Services.

## Schedule

The schedule for this RFQ is as follows:

May	13, 2020	RFQ Issued
May	22, 2020	Deadline for technical questions
June	11, 2020	SEDA-COG Response to technical questions
June	22, 2020	Statement of Qualifications Packages Due
July	14-16, 2020	Presentations by shortlisted firms (if needed)
July	23, 2020	Selection(s) complete and negotiations begin
August	20, 2020	Contract Start Date (Tentative)

## Federal and State Interest

Portions of the funding for the contracts are provided from state sources through the Pennsylvania Department of Transportation (PennDOT), and from federal sources through the Federal Highway Administration (FHWA) and/or the Federal Transit Administration (FTA). Any contracts awarded pursuant to this RFQ will contain provisions required by the federal and state funding sources, as appropriate.

## **REQUIRED QUALIFICATIONS**

Responses to this RFQ must demonstrate that the firm or team has the ability to provide transportation planning services outlined in the Scope of Services in Appendix A, on an on-call, as-needed basis.

These services are expected to include evaluation, maintenance, update and support of various plans required as part of the metropolitan transportation planning program. Services may also include the development of additional plans and the completion of surveys, inventories, evaluations, analyses and studies, or the development of tools and techniques in support of other transportation planning efforts.

Some consideration will also be given to familiarity with the SEDA-COG MPO region demonstrated through previous work completed within the region and/or experience completed in areas with a similar mix of urban and rural transportation issues.

## **DISADVANTAGED BUSINESS ENTERPRISE INVOLVEMENT**

SEDA-COG is committed to providing opportunities for Disadvantaged Business Enterprises (DBEs) to compete for work. Accordingly, the work awarded pursuant to this RFQ will be carried out in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

There is a project goal of 6.99% of the total contract dollar amount set for work resulting from this RFQ. Firms or teams of firms must demonstrate the ability to meet the participation goal or be able to document a good faith effort to achieve the goal in accordance with 49 CFR Part 26, considering the potential tasks included in the scope of work. Successful firms or teams will be required to report DBE participation on a quarterly basis as described in Appendix D for all work orders resulting from this RFQ.

SEDA-COG recognizes DBE organizations certified by the Pennsylvania Unified Certification Program ([www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do](http://www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do)). Verification of PAUCP certification for participating DBE firms must be included in the Statement of Qualifications Package. SEDA-COG is required to create and maintain a bidders list for DBE and non-DBE contractors and subcontractors for work resulting from this RFQ. A data form for this list is included as Appendix B. Completed forms for each lead and participating firm must be included in the Statement of Qualifications Package.

## **STATEMENT OF QUALIFICATIONS PACKAGE SUBMISSIONS**

Statements of Qualifications packages submitted in response to this RFQ must be received by SEDA-COG no later than 4:00 PM on June 22, 2020.

Each package must include one original and five copies. The Statement of Qualifications should include the following elements in the order presented below:

1. Team Introduction. Identifying the lead firm and all other firms participating (if any), and indicating participating DBE firms (if any).
2. Scope of Services. The scope must summarize the firm's or team's understanding of the services to be provided, and specifically indicate which potential work tasks described in the Scope of Services included in this RFQ the firm or team is prepared and qualified to support.
3. Team Approach. Work orders initiated under the on-call consultant services contracts may require a range of services and specializations. The approach section must describe the firm or team's plan to meet the needs for these services on an "on-call" basis. The approach should identify how tasks under work orders will be assigned and managed, how estimates and budgets will be established and maintained, how staff will be assigned, how progress will be assessed and what quality control/quality assurance measures will be followed.
4. Qualifications and Experience Record. This section should describe technical expertise and relevant qualifications of the lead firm and team members with respect to the potential work tasks listed in the Scope of Services, and should also summarize experience on projects similar to the potential work tasks and on other on-call contracts.
5. Key Staff. The package should include an organization chart for the firm or team that indicates how project tasks will be assigned and how the specializations of each team member will be considered in that assignment. The chart should identify a single point of contact for the team who, if the team is selected, will be responsible for coordinating the team's effort, assigning tasks, monitoring progress, developing budgets, providing deliverables, and providing records of participation, invoices and work order status.
6. DBE Compliance. The package must clearly identify any participating DBE and Small Business Enterprise (SBE) firms included in the package, and must describe how DBE firms will be used in a meaningful way to meet a participation goal of **6.99%** for work orders authorized under an on-call consulting services contract, including relative areas of specialization and task assignment. The package must include verification of PAUCP certification, and a Bidders List Data Form for each participating firm (Appendix B).
7. Required Provisions. Additional forms for required provisions are included as appendices C through K. These provisions must be included in any contracts resulting under this RFQ. All packages must demonstrate that these provisions have been reviewed and will be included in any agreements awarded, or identify issues which may conflict with the inclusion of these provisions, including the following:
  - Federal Nondiscrimination and Equal Employment Opportunity Clauses (Appendix C)
  - Disadvantaged Business Enterprise Requirements for Planning Partners (Appendix D)
  - Lobbying Certification and Disclosure of Lobbying Activities (Appendices E, F)
  - Provisions Concerning Americans with Disabilities Act (Appendix G)
  - Nondiscrimination/Sexual Harassment Clause (Appendix H)
  - Contractor Integrity Provisions (Appendix I)

Contractor Responsibility Provisions (Appendix J)  
Offset Provision (Appendix K)

Note that the form included as Appendix F should be completed and included as part of the package.

8. Package Authorization. This section should consist of a letter stating the time period for which the package will remain in effect, including any special conditions impacting the package, such as potential conflicts of interest, or business or family relationships between the firms and officials or employees of SEDA-COG, and signed by a duly authorized official of the lead firm and each participating firm.

All materials submitted as part of the Statements of Qualifications, including attachments, supplementary material, addenda, etc., shall become the property of SEDA-COG and will not be returned to the sender.

Excluding the required attachments (Appendices B and F), the packages should not exceed 50 pages in length.

### **SELECTION**

A review committee composed of SEDA-COG staff and selected stakeholders will review and evaluate Statement of Qualifications packages, and will select up to three firms or teams of firms for separate On-Call Consultant Services contracts.

Packages will be evaluated on the relative quality of the required elements. Additional consideration will be given to the geographic location of the firms or lead firms in teams, and/or demonstrated familiarity through previous work completed within the SEDA-COG MPO region. The elements of the Statements of Qualifications will be considered with the following weighting:

Team Introduction	10%
Scope of Services	20%
Team Approach	30%
Qualifications and Experience Record	20%
Key Staff	5%
DBE Compliance	5%
Package Authorization	5%
Required Provisions	<u>5%</u>
	100%

After review and evaluation of all Statements of Qualifications, the Statements of Qualifications packages will be ranked based on total score, and the committee will develop a short list of the top ranked firm(s) or teams.

SEDA-COG reserves the right to reject any and all packages, waive informalities and irregularities in packages received and to accept any portion of any proposal if deemed in the best interests of SEDA-COG.

SEDA-COG also reserves the right to reject all packages submitted, to cancel all solicitations requested under this notice, and/or to re-advertise solicitation for these services.

The point of contact identified for each of the short listed firm(s) or teams will be notified by phone and/or email on or about July 3, 2020.

Short listed firm(s) or teams may be asked to provide clarification on materials submitted, to provide additional materials, or to make oral presentations to the review committee.

If required, presentations are tentatively scheduled for July 14-16, 2020 at the offices of SEDA-COG. Any presentations will be limited to a 45-minute maximum per firm or team, and may include a presentation of up to 20 minutes, allowing the remaining time for discussion and questions from the review committee. Teams should plan for the presentations to be made via teleconference, although in-person presentations may be considered based on work and congregate restrictions from the Pennsylvania Plan for Recovery in place at that time.

The review committee will be given adequate time to review and refine scores based on the presentations. SEDA-COG may then select up to three of the highest ranked firms or teams, and seek to negotiate On-Call Consultant Services with the selected firm(s) or teams of firms.

The point of contact for each firm or team of firms will be notified by phone or email by July 23, 2020, and contract negotiations will commence. The point of contact for any firm or team of firms not initially selected for negotiations will be notified by phone or email, also by July 23, 2020.

In the event that any or all of the contract negotiations are deemed unreasonable, SEDA-COG may choose to negotiate with the next highest ranked firm(s) or team(s) of firms and proceed accordingly.

## **CONTRACT NEGOTIATIONS**

Contracts resulting from this RFQ will be awarded to the firm(s) or team(s) that best demonstrate qualifications meeting the criteria in this RFQ and the needs of SEDA-COG. If unable to successfully conclude contract negotiations with one or more of the selected firms(s) or team(s), SEDA-COG will discontinue negotiations with that firm or team and, if desired, enter into negotiations with the next highest ranked firm or team.

SEDA-COG does not guarantee that all assignments for consulting services in support of transportation planning will go to the selected firms, and SEDA-COG may go through other selection processes for specific projects.

## **FORM OF CONTRACT**

SEDA-COG anticipates that separate cost reimbursement contracts with up to three firms or teams of firms may result from this RFQ. Consulting fees shall be paid upon satisfactory completion of work tasks within each individual work order. Selected firms or teams should follow PennDOT invoicing practices and documentation, with invoicing on a quarterly basis.

Assignment of individual work tasks shall be at the discretion of SEDA-COG. Services will be provided on an on-call, as-needed basis, with separate work orders established for each task assigned. Each work order will contain specific details including the schedule for completion, deliverables, and anticipated costs.

## **TERMINATION**

Any work orders under contracts awarded will be subject to availability of requested funds from other governmental bodies. If such funds are not distributed by said governmental bodies to SEDA-COG, this agreement shall terminate, and the consultant shall hold SEDA-COG harmless for any loss or liability arising out of the contract award cancellation because of non-receipt of the funds.

SEDA-COG shall also have the right to terminate contracts awarded at any time upon thirty (30) calendar days written notice to the point of contact in the event the efforts are to be abandoned for any reason, indefinitely postponed, or if the firm or team becomes unable to perform the work. Furthermore, SEDA-COG shall have the right to terminate Consultant Services immediately when, in the judgment of SEDA-COG, such services are unsatisfactory, the Consultant has failed to abide in all respects by the conditions of this Agreement, or for the convenience of SEDA-COG if SEDA-COG determines termination to be in its best interest. The firm or team shall be compensated for the actual cost of services satisfactorily rendered up to the date of the termination notice.

## **COMPLETION**

Consultant services contracts are expected to be in place after August 20, 2020, and will cover a period to end June 30, 2024. Completion requirements for individual work tasks assigned will vary based on the requirements of the particular tasks, and be established as part of each work order as noted above.

## **APPENDIX A**

### **Scope of Services**

The SEDA-Council of Governments Metropolitan Planning Organization is seeking support for a wide range of services related to transportation planning. These services are to be provided on an on-call, as-needed basis, and be provided over a time period extending from the notice to proceed through June 30, 2024.

Consultant tasks assigned through the contracts will be completed under a series of individual work orders. SEDA-COG anticipates that the majority of the work orders will be small in scale and short in duration. Such work orders could include assistance in the completion of updates to existing plans and analyses, completion of reports, data collection and analysis. Examples of potential or likely projects that may be requested are listed below.

### **Technical and Public Involvement Support for the SEDA-COG Long Range Transportation Plan Update**

Developing a Long Range Transportation Plan (LRTP) that establishes the vision and goals that will guide public decision impacting transportation is an integral part of the planning process. The LRTP for the SEDA-COG MPO was last updated in 2016, and Federal legislation requires that the next update be completed no later than June 30, 2021.

This update will implement several new requirements for the LRTP, including the adoption of a performance-driven outcome-based approach to planning, and a focus on the Ten Federal Planning Factors included in the FAST Act.

To extend the abilities of the SEDA-COG MPO staff, the program proposes to enlist consultant support for the following tasks:

#### **Performance Based Planning**

- Supplement staff efforts for the evaluation of performance measures, providing additional resources and tools to assess the performance of the regional transportation network relative to established targets.
- Work with staff to develop or apply existing tools for evaluating the impact of the projects included in the LRTP and TIP on future performance measures.
- Assist staff in the development of implementation steps consistent with the 2019 MPO Strategic Plan, including analysis to be conducted as part of the update related to freight planning, safety, resiliency, and traffic operations.
- Aid staff in efforts to develop clear, impactful and readily understood visualizations for describing the performance of the regional transportation networks.

#### **Public Involvement**

- Extend the reach of the public participation program to grow the number of participants in the process and increase the impact of participation.
- Facilitate a public review process for potential projects, similar to the sessions used

in the 2016 LRTP update. Assist staff in developing procedures for adopting the sessions to a virtual meeting format, if required.

- Assist staff in preparation for and facilitation of stakeholder listening session with area public service agencies, similar to sessions conducted for 2016 LRTP update. Assist staff in adapting to a virtual format, if required.
- Assist staff in the development and facilitation of similar listening sessions focused on freight and economic development issues, in a virtual or in-person format, as required.
- Realize opportunities for education about the transportation planning process as part of the outreach effort.

### **Plan Maintenance:**

The SEDA-COG MPO maintains and updates a range of transportation plans for the region that are subject to periodic review and update requirements, including the following:

1. Transportation Improvement Program
2. Long Range Transportation Plan
3. Public Participation Plan
4. Limited English Proficiency Plan
5. Title VI Plan
6. Coordinated Public Transit – Human Services Transportation Plan
7. Unified Planning Work Program

The MPO may assign tasks for updates to these plans, including:

- Review existing transportation plans and/or relevant guidance for the preparation and maintenance of such plans, with the plans of concern to be identified and prioritized by a working group comprised of SEDA-COG and PennDOT.
- Where required, consult references identified, conduct analyses required, develop policies and formulate updates in compliance with current guidance.
- Where required and as directed by the working group, conduct outreach efforts to solicit public input for and review of plans updated, including documentation of comments and input received, and any resulting changes applied to the products.
- If requested, provide support to staff in developing data sources and analysis methods for evaluating the region's compliance with the provisions of the FAST Act or current highway authorization legislation, including the assessments of performance measures and the development of regional targets, and the impact of projects included in plans on performance measure compliance.
- If requested, assist staff in conducting an update to the SEDA-COG Public Participation Plan to highlight best practices for conducting Virtual Public Involvement.
- If requested, provide LEP support services, including translation of documents and notices, or evaluation of translation services for accuracy and clarity.
- Provide editing, layout and publishing assistance as required, including the provision of

print-ready files in PDF format, along with base files in commonly used word processing, spreadsheet or GIS formats as appropriate.

### **Other Services:**

- Provide support to local municipalities in addressing the impacts of major highway projects, which may include updates to or development of:
  - Multi-municipal, municipal or county comprehensive plans
  - Official maps
  - Corridor plans
  - Land use tools including traditional zoning ordinances, overlay zoning ordinances, and/or Subdivision and Land Development ordinances
- If requested, provide field support in collecting data on local transportation assets, including locally owned bridges between eight and twenty feet in length, locally owned roadways, traffic signals, sidewalks and shoulders, freight facilities, stormwater facilities, etc.
- If requested, provide assistance to the MPO or regional stakeholders in the development of applications for funding programs, including TA, Green Light – Go, ARLE, the Multi-modal fund, or other programs identified.
- If requested, assist in the development of new practices for seeking public input, such as the establishment of community forums, expansion of social media efforts or development of regional outreach efforts.
- If requested, provide technical support in the development of new plans and planning projects that may include corridor plans, safety plans, land use coordination plans, capital investment plans and signal timing plans.
- If requested, provide assistance in analysis using Geographic Information Systems, developing scripts, layers, data and meta-data, and mapping products, or assisting staff in the development of similar products.

## **APPENDIX B**

SEDA-COG is committed to providing opportunities for Disadvantaged Business Enterprises (DBEs) to compete for work. As a recipient of USDOT funds through the Pennsylvania Department of Transportation, SEDA-COG is required to create and maintain a "Bidders List" of all DBE and non-DBE contractors and subcontractors who seek to work on contracts resulting from this RFQ.

<b>SEDA-COG Bidders List Survey</b>			Year:		
	Lead Firm		Team Member		
If Team Member, Name of Lead Firm or Team:					
Firm name:					
Address:		Residing County:			
		State:			
City		Zip Code:			
		Age of Firm in Years:			
Phone:					
Is this Firm a certified Disadvantaged Business Enterprise (DBE) Firm			No	Yes	
Class Type:					
Is this firm listed on the PA Unified Certification Program			No	Yes	
Is this firm listed on the PA Small Business Element Certification Program			No	Yes	
Name and email contact for questions regarding the information in this form:					
Firm's Current Average Annual Gross Receipts (required by 49 CFR 26.11)					
	Less than \$500,000		\$2,000,000 - \$5,000,000		
	\$500,000-\$1,000,000		Over \$5,000,000		
	\$1,000,000 - \$2,000,000				
In the spaces below, please indicate whether your firm has attempted to participate or participated in federally-assisted transportation projects since October 1, 1999 by supplying a bid or quote as prime contractor or prime consultant, sub-contractor or subconsultant, material supplier/manufacturer or service provider. Please indicate only primary activities provided by your firm:					
Contractor		Consultant		Material Supplier/ Manufacturer	Service Provider
	Prime		Prime		
	Sub		Sub		
Thank you for providing this information. This effort is extremely important in helping SEDA-COG to assess performance relative to the overall DBE goal.					

## **APPENDIX C**

### **FEDERAL NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY CLAUSES**

1. **Selection of Labor:** During the performance of this contract, the contractor shall not discriminate against labor from any other State, possession or territory of the United States.
2. **Employment Practices:** During the performance of this contract, the contractor agrees as follows:
  - a. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by the State highway department setting forth the provisions of this nondiscrimination clause.
  - b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
  - c. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the State highway department advising the said labor union or workers' representative of the contractor's commitments under section 2 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
  - d. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations (41 CFR, Part 60) and relevant orders of the Secretary of Labor.
  - e. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Federal Highway Administration and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
  - f. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or part and the contractor may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
  - g. The contractor will include the provisions of Section 2 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Federal Highway Administration, the contractor may request the United States to enter into such litigation to protect the interests of the United States.
3. **Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment:** During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations) which are herein incorporated by reference and made a part of this contract.
- b. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, sex or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in the Regulations.
- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontract or supplier shall be notified by the contract of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, sex or national origin.
- d. Information and Reports: The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State highway department or the Federal Highway Administration to be pertinent to ascertain compliance with such Regulations or directives.

Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the State highway department, or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

- e. Sanctions for Noncompliance: In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - (1) Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (2) Cancellation, termination or suspension of the contract, in whole or in part.
- f. Incorporation of Provisions: The contractor shall include the provisions of this paragraph 3 in every subcontract, including procurements of materials and leases of equipment, unless except by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontractor or procurement as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the State highway department or enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Wherever hereinabove the word "contractor" is used, it shall also include the word engineer, consultant, researcher, or other entity (governmental, corporate, or otherwise), its successors and assigns as may be appropriate.

\* Not to be used if otherwise included in Construction or Appalachian Contract Provisions.

## **APPENDIX D**

### **DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS FOR PLANNING PARTNERS**

#### **I. General –**

Include the following provisions (Paragraphs a through d) in every contract and subcontract entered into in support of the grant, so that such provisions will be binding not only upon the prime contractor, but also upon each subcontractor, service provider, and trucking firm performing work towards the contract.

- (a) Policy for Federally-Funded Projects.** It is the policy of the U.S. Department of Transportation (DOT) and the Pennsylvania Department of Transportation (Department) that Disadvantaged Business Enterprises (DBEs) as defined in Section 26.5 of Title 49 Code of Federal Regulations, Part 26, as amended, (Part 26) and this specification, be afforded the opportunity to participate in the performance of contracts financed in whole or in part with Federal Funds. Consequently, the DBE requirements of Part 26 apply to this contract.
- (b) DBE Obligation.** The grantee will take all necessary and reasonable steps to ensure that DBEs have the opportunity to compete for and to perform contracts. The grantee shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of the Department and U.S. Department of Transportation-assisted contracts.
- (c) Failure to Comply with DBE Requirements.** Failure by the grantee to carry out these requirements constitutes a material breach of this contract, which may result in termination of this grant agreement or such other remedy as the Department deems appropriate, which may include, but is not limited to:
  - a. Withholding progress payments;
  - b. Assessing sanctions;
  - c. Liquidated damages; and/or
  - d. Disqualifying the contractor from future bidding as non-responsible.
- (d) Small Business Enterprise Participation.** The recruitment and utilization of certified Small Business Enterprises (SBEs) serves as an additional requirement in addition to all other equal opportunity requirements of the grant. There is no SBE goal for this grant.

#### **II. DEFINITIONS—**

The following definitions apply for terms used in this specification:

- (a) Disadvantaged Business Enterprise (DBE).** A for-profit small business concern that meets business concern that meets the following requirements:
  - 1. DBE certification from the Pennsylvania Unified Certification Program (PAUCP) as listed on [www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do](http://www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do).
  - 2. That meets the ownership and control requirements of the DBE certification program as set forth in Part 26.
  - 3. That meets the Personal Net Worth requirements of the DBE certification program.
- (b) Small Business Enterprise (SBE).** A for-profit small business concern that meets the following requirements:
  - 1. An entity certified by the Pennsylvania Department of Transportation (PennDOT) as listed on [www.dotsbe.pa.gov/SBEWeb/sbe/viewHome.do](http://www.dotsbe.pa.gov/SBEWeb/sbe/viewHome.do).
  - 2. That meets the ownership and control requirements of the Small Business Element (SBE) certification program.
  - 3. That meets the Personal Net Worth requirements of the SBE certification program.

- (c) **Commercially Useful Function.** A DBE performs a Commercially Useful Function (CUF) 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 CUF, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.
- (d) **Transportation Planning Coordinator.** An individual within the Department's Program Center that is responsible for coordinating and overseeing planning activities with the grantee.
- (e) **Interdisciplinary Review Team (IRT).** A team of three (3) individuals representing the Department's Program Center and Bureau of Equal Opportunity that performs the initial review of the GFE documentation and makes the recommendation to the Director of the Bureau of Equal Opportunity.
- (f) **Committee.** The Department's Good Faith Effort (GFE) Review Committee.
- (g) **Director.** Director, Bureau of Equal Opportunity.
- (h) **DBE Participation.** The work performed by DBEs on a contract and counted toward the project's DBE goal. This information is to be submitted with the bid/proposal and if approved becomes a contractual obligation for the life of the contract.
- (i) **Revised DBE Participation.** If, during the performance of a contract entered into in support of this grant the DBE Participation requires revision, the selected bidder/offeror must request approval from the grantee. The grantee must obtain concurrence from the Department prior to approving any revision. If approved, the Revised DBE Participation becomes a contractual obligation for the life of the contract.
- (j) **Supplier.** A manufacturer, regular dealer, or transaction expeditor/broker.
1. **Manufacturer.** A DBE/SBE that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  2. **Regular Dealer.** A DBE/SBE that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  3. **Transaction Expeditor/Broker.** A DBE/SBE packager, broker, manufacturers' representatives, or other persons who arrange or expedite transactions and who arrange for material drop-shipments.
- (k) **Service Provider.** A DBE/SBE that performs professional, technical consultant, or managerial services.
- (l) **Shortfall.** The difference between the dollar amount on the approved DBE commitment and the amount of payments to the approved DBE entities.

### III. COUNTING DBE PARTICIPATION

Utilization of certified DBEs is in addition to all other equal opportunity requirements of the contract.

Count DBE Participation toward meeting the DBE Goal for federal projects as follows: If a firm is a certified DBE contractor or subcontractor at the time of submission for the bid, the total dollar value of the contract awarded to the certified DBE is counted toward the applicable DBE goal as provided below. Any services to be performed by a DBE are required to be readily identifiable to the project.

**(a) Construction.**

- 1. Prime Contractor.** The Department requires that all prime contractors including DBE prime contractors perform at least fifty percent (50%) of the work on a Department project. A DBE prime contractor will receive credit for all work performed with its own forces. The Department strongly encourages DBE prime contractors to make additional outreach efforts to solicit DBEs to perform subcontracting work on the project.
- 2. Subcontractor.** When a DBE participates in a contract directly as a subcontractor or as a second-tier or lower-tier subcontractor, count only the value of the work actually performed by the DBE. Count 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 subcontract, including supplies purchased or equipment leased by the DBE.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards the contract's DBE goal.

Count expenditures to a DBE contractor only if the DBE is performing a CUF on that contract.

**(b) Materials and Supplies.**

- 1. DBE Manufacturer.** If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies.
- 2. DBE Regular Dealer.** If the materials or supplies are purchased from a DBE regular dealer, count sixty percent (60%) of the cost of the materials or supplies.
- 3. DBE Transaction Expeditior/Broker.** If the materials or supplies are purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves.

**(c) Service Providers.** Count toward the DBE Goal 100% of expenditures of DBE services including, professional, technical, consultant, or managerial services. Count fees or commissions charged for providing any bonds or insurance specifically required for the performance the contract, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

**(d) Trucking Firms.** Count 100% of trucking costs using the following factors to determine what can be counted:

1. Count if the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. Count if the DBE owns and operates at least one fully licensed, insured, and operational truck used on the contract.
3. Count the total value of the transportation services the DBE provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is a certified DBE. If the DBE leases trucks from another DBE, count the total value of the transportation services the lessee DBE provides on the contract.

5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. If the DBE leases trucks from a non-DBE count only the fee or commission it paid as a result of the lease arrangement. Do not count the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this provision, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from being used for work for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### IV. COUNTING SBE PARTICIPATION

- (a) Recruitment and utilization of certified SBEs is in addition to all other equal opportunity requirements of the contract.
- (b) There is no SBE goal.
- (c) Count SBE participation the same as DBE participation.

#### V. ACTIONS REQUIRED BY THE BIDDER AT THE BIDDING STAGE AND PRIOR TO AWARD FOR PROJECTS WITH A DBE GOAL-

- (a) **Submission Requirements.** If the grantee establishes a DBE goal in connection with a contract awarded in support of the grant, then the selected bidder/offeror must include its DBE Participation with the bid/proposal. This submission must include the business name of the DBE firm with address, contact person, and phone number, a detailed narrative description of the service to be provided by the DBE, the North American Industrial Classification System (NAICS) code(s) that correspond(s) to the work to be performed by the DBE firm, and the percent of the bid's cost to be contractually allocated to the DBE in the bid submission. A letter of intent (or comparable documentation) from the DBE stating that the DBE has agreed to enter into a subcontract if the vendor is successful should also be included with the bid. Do not request or include physical certification letters. The PA UCP database at [www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do](http://www.dotsbe.pa.gov/PAUCPWeb/paucp/viewHome.do) is the only resource that should be used to verify DBE eligibility. In addition, please note that DBE certification does not expire and expiration dates should not be requested or included. As long as a firm remains visible in the PA UCP database they remain eligible to participate as a DBE on federally-assisted contracts.

When the DBE goal established by the grantee is not met (the grantee will not round), demonstrate a Good Faith Effort (GFE) to meet the contract's DBE goal. Demonstrate that the efforts made were those that a bidder/offeror seeking to meet the DBE goal established by the grantee would make, given all relevant circumstances. Failure to include GFE documentation with the submission, when the DBE goal is not met, will result in rejection of the bid/proposal.

- (b) **Good Faith Effort Requirements.** In response to a bid/proposal, the bidder/offeror must make a 'Good Faith Effort' (GFE) to subcontract a portion of the contract work to certified DBEs. The demonstration of GFE is accomplished by seeking out DBE participation in the contract given the totality of all relevant circumstances. If unable to meet the contract's established DBE Goal, the selected bidder/offeror must submit documentation of its GFE. The following illustrate the types of efforts that may be taken, but shall not be deemed to be exclusive or exhaustive. The Director and/or Committee will consider other factors and types of efforts that may be relevant:

- Efforts made to conduct market research to identify small business contractors and suppliers and solicit through all reasonable and available means (e.g., use of the DBE Directory, attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The selected bidder/offeror must provide written notification, at least fifteen (15) calendar days prior to the bid due date, to allow the DBEs to respond to the solicitation. The selected bidder/offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- Efforts made to select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the selected bidder/offeror might otherwise prefer to perform these work items with its own forces.
- Efforts made to provide 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.
- Efforts made to negotiate in good faith with interested DBEs. It is the selected bidder's/offeror's responsibility to make a portion of the contract 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/offeror 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 DBE goals into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in and of itself sufficient reason for a bidder's/offeror's failure to meet the contract's DBE goal, provided that such costs are reasonable. Also, the ability or desire of the selected bidder/offeror to perform the work of a contract with its own work force does not relieve the bidder/offeror of the responsibility to make GFE. The selected bidder/offeror is not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- The selected bidder's/offeror's determination of a DBE as being unqualified without sound reasons based on a thorough investigation of its capabilities. The selected bidder's/offeror's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the selected bidder's/offeror's efforts to meet the DBE contract goal. Another practice considered an insufficient GFE is the rejection of a DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder/offeror or prime contractor to accept unreasonable quotes in order to satisfy a contract DBE goal.
- Efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
- Efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Efforts to effectively use the services of the Department's DBE and/or SBE Supportive Services Centers, services of available minority/women community organizations; minority/women 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.

## VI. ACTIONS TO BE TAKEN BY THE GRANTEE AND DEPARTMENT BEFORE AWARD FOR PROJECTS WITH A DBE GOAL --

- (a) **Approval.** If the selected bidder/offeror includes the DBE Participation with their bid/proposal, meets the contract's DBE goal, and all other contract requirements, the grantee will approve the submission.
- (b) **Good Faith Effort Review.** If the selected bidder/offeror includes the DBE Participation with their bid, but fails to meet the contract's DBE goal, the grantee will review the GFE documentation included with the bid. The selected bidder/offeror may not provide additional GFE documentation beyond what exists in writing at the time of bid submission. If during the

review of the bidder's/offeror's GFE information the reviewers have questions, the selected bidder/offeror may be contacted for clarification. The GFE steps to be taken are as follows:

1. The grantee reviews the GFE submission and makes a recommendation to approve or disapprove to the Transportation Planning Coordinator.
2. If the grantee recommends approval then Transportation Planning Coordinator will do one of the following:
  - a. Concur with the grantee's recommendation that a GFE was made and the DBE Participation will be approved
  - b. Disagree with the grantee's recommendation which will result in a review of the GFE submission by the IRT.
3. If the grantee recommends disapproval then the IRT will review the GFE submission.
4. The IRT reviews and makes a recommendation to the Director.
5. The Director will do one of the following:
  - a. Concur with the IRT recommendation that a GFE was made and the DBE Participation will be approved;
  - b. Concur with the IRT disapproval of the GFE submission. The selected bidder/offeror will be afforded the opportunity for administrative reconsideration as required by Part 26.
    - (i.) If the selected bidder/offeror requests administrative reconsideration, the Director forwards the GFE request to the Committee.
    - (ii.) If the selected bidder/offeror does not request administrative reconsideration, then the recommendation stands and the GFE is disapproved. The selected vendor must notify the Department to this effect in writing. The bid will then be considered non-responsive and will be rejected.
  - c. Disagree with the IRT recommendation. If the Director determines that a GFE has been made, the DBE Participation will be approved. If the Director determines that a GFE has not been made, the selected bidder/offeror will be afforded the administrative reconsideration process as described above.
6. If administrative reconsideration is requested, the Committee meets and makes the final determination. If the Committee determines that the selected bidder/offeror made a GFE, the DBE Participation will be approved. If the Committee determines that the selected bidder/offeror has failed to make a GFE, the bid will be rejected and the selected bidder/offeror will be notified of the rejection. The grantee will then review the next selected bidder's/offeror's DBE participation to determine if the DBE goal is met or if a GFE was made.

#### **VII. ACTION TO BE TAKEN BY THE DEPARTMENT DURING PERFORMANCE OF THE CONTRACT—**

To ensure that all obligations awarded to DBEs under this contract are met, the grantee and the Department will review the selected bidder's/offeror's DBE involvement efforts during the performance of the contract whether or not the DBE is listed on the approved DBE Participation. The review will include a CUF review and analysis for all DBEs performing on the contract.

**Sanctions.** Upon completion of the work the grantee and the Department will review the actual DBE participation and make a determination regarding the selected bidder's/offeror's compliance with the applicable requirements. Sanctions may be imposed for noncompliance or unwarranted shortfalls in the approved DBE goal.

#### **VIII. ACTIONS REQUIRED BY THE SELECTED VENDOR DURING PERFORMANCE OF THE CONTRACT--**

- (a) **DBE Participation.** When DBE Participation is approved in an amount less than the contract's DBE goal, continue GFE toward meeting the contract's DBE goal for the life of the contract. Ensure that the DBE Participation is attained. Proof of attainment is provided by payments to DBEs and documented in monthly reports.
- (b) **DBE Revised Participation.** Obtain written consent from the Department before substituting a DBE or making any change to the approved DBE Participation or any other DBE performing on the project. Immediately request substitution authorization from the grantee in writing who will contact the Department. The request must include documentation supporting the substitution and written agreement from the DBE to the change. Include proof that a

certified letter giving the DBE five (5) days to respond with acceptance or to notify the grantee of non-acceptance. Demonstrate that every effort has been made to allow the DBE to perform.

1. If the arrangement to be replaced is agreeable between the bidder's/offeror's and the DBE, document the following procedures:

- Make a GFE to subcontract the work with another DBE, or subcontract other work items to DBE firms, to make up the DBE shortfall.
- When the substitution results in meeting the DBE goal, complete a Revised DBE Participation which includes letter(s) from the DBE(s) of their intent to perform on the contract. If the DBE being replaced or substituted has already performed on the contract, the Revised Participation request should include the total amount paid to the DBE prior to its substitution or replacement.
- When the substitution does not result in meeting the DBE goal, complete a Revised DBE Participation with DBE acknowledgement and provide GFE documentation. If the DBE performed on the project, the Revised DBE Participation should include the total amount paid to the DBE prior to their substitution.

**Good Faith Effort Review.** The grantee will review the GFE documentation for substitution. If, during the review of the selected bidder's/offeror's GFE information and documentation, the reviewers have questions, the selected bidder/offeror may be contacted for clarification. The GFE steps to be taken are, as follows:

- a. The grantee reviews the GFE submission and makes a recommendation to the Transportation Planning Coordinator.
  1. If the recommendation is to approve and the Transportation Planning Coordinator concurs, then the Revised DBE Participation will be approved.
  2. If the recommendation is to disapprove or if the Transportation Planning Coordinator disagrees with the grantee's recommendation, then the GFE is forwarded to the IRT for review and determination.
- b. The IRT either:
  1. Approves recommendation that the GFE was met and the Revised DBE Participation will be approved, or
  2. Disapproves the GFE resulting in a shortfall requiring the selected vendor to continue to fulfill its GFE obligation and commitment.
- c. If forwarded to them by the Transportation Planning Coordinator, the IRT makes a final determination.

Do not perform any of the DBE work included in the substitution request without prior written approval from the Department.

If the projected DBE participation meets or exceeds the DBE goal amount for the contract without replacing the DBE, then no contract shortfall exists. A Revised DBE Participation must be submitted to reflect the decreased dollar amount.

2. If the arrangement to be replaced is not agreeable between the selected bidder/offeror and the DBE, the following procedures are required:

- Until a determination is made, do not perform the DBE work without prior approval.

- The IRT will review and make a determination and the grantee will notify both the selected bidder/offeror and the DBE.

- The selected bidder/offeror or the DBE may request a meeting with the Department by contacting the grantee.

**(c) SBE Participation.** There is no goal for SBE participation. However, the utilization of SBE firms must be reported and documented in monthly reports with proof of payment consistent with the process for DBE firms.

**(d) Additional Work.** When additional work is required for any classification of work which is identified on the DBE Participation to be performed by the DBE, at least (50%) of this additional work will be performed by the same DBE unless the DBE submits, in writing, that he/she cannot perform the work due to his/her own limitations.

**(e) Progress Payments.** The bidder/offeror shall make payments to all subcontractors, suppliers, service providers, and consultants no later than thirty (30) days after being reimbursed by the Department. Document all DBE and SBE progress payments on a monthly basis. Bring to the attention of the grantee, in writing, any situation in which regularly scheduled progress payments are not made to DBE/SBE subcontractors, suppliers, service providers or consultants.

**(f) Records and Reports.** Both the bidder/offeror and the grantee shall keep such project records as are necessary to determine compliance with DBE Requirements. These records can be used as GFE documentation. Design these records to indicate:

- The number of disadvantaged and non-disadvantaged subcontractors, small businesses, regular dealers, manufacturers, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project.

- The progress and efforts made in seeking out DBE and SBE contractor organizations and individual DBEs and SBEs for work on this project.

- Documentation of all correspondence, personal contacts, telephone calls, etc., to obtain the services of DBEs and SBEs for this project. Submit reports, as required by the Department. Certify that the amounts were actually paid to the DBE and SBE for work performed on the project and keep cancelled checks on file in the home office to reflect payment for the specific project and for inspection and audit by the Department. Enter the payment information on the monthly payment report which will include the following:

- The number of contracts awarded to DBEs and SBEs, noting the type of work and amount of each contract executed with each firm and including the execution date of each contract.

- The amount paid to each DBE and SBE during the month and the amount paid to date. If no payments are made to a DBE/SBE during the month, enter a zero (\$0.00) payment.

- Paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual DBE's and SBEs work. In the event the actual amount paid is less than the award amount, provide a complete explanation of the difference.

Maintain all such records for a period of three (3) years following acceptance of final payment. Make these records available for inspection by the Department and FHWA.

If DBE credit is being claimed for material costs included in a DBE subcontract or agreement, submit purchase orders for the material to PennDOTDBEGoal@pa.gov on a monthly basis in conjunction with the monthly payment report.

The grantee shall ensure records have sufficient information in order to complete and submit the Planning Partners DBE Report quarterly.

# MANAGEMENT DIRECTIVE

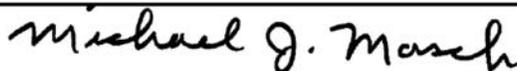
305.16  
Amended  
Number

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE

Subject:

Lobbying Certification and Disclosure

By Direction Of:



Michael J. Masch, Secretary of the Budget

Date:

July 3, 2003

With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000; or an award of a federal loan or a commitment providing for the United States to ensure or guarantee a loan exceeding \$150,000, all recipients must certify that they will not use federal funds for lobbying and must disclose the use of non-federal funds for lobbying by filing required documentation. The Disclosure of Lobbying Activities Standard Form LLL has been deleted from this amendment (Enclosure 2) and may be accessed at [www.whitehouse.gov/omb/grants](http://www.whitehouse.gov/omb/grants).

- 1. PURPOSE.** To ensure that all Commonwealth agencies understand and comply with federal regulations prohibiting the use of federal funds for lobbying and requiring disclosure of non-federal funds used for lobbying.
- 2. SCOPE.** This directive applies to all agencies under the Governor's jurisdiction. It is recommended that other agencies adopt similar policy and procedures.
- 3. OBJECTIVE.** To announce policy and provide procedures regarding required certification and disclosure of the use of funds for lobbying.
- 4. DEFINITION.** For the purpose of this directive, **lobbying** means influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 5. POLICY.** Commonwealth agencies shall not contract with outside firms or individuals to perform lobbying services, regardless of the source of funds.

**6. RESPONSIBILITIES.** With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000, or an award of a federal loan or a commitment providing for the United States to ensure or guarantee a loan exceeding \$150,000, **agencies** are responsible for:

- a. Completing and filing with federal agencies Lobbying Certification Forms as required (see Enclosure 1).
- b. Providing to subgrantees, with all grant awards, Lobbying Certification Forms, and Disclosure of Lobbying Activities forms with instructions for completion and return. See [www.whitehouse.gov/omb/grants](http://www.whitehouse.gov/omb/grants) for current form.
- c. Forwarding to federal agencies, as required, certification and disclosure forms received from subgrantees.

**7. PROCEDURES.** With respect to an award of a federal contract, grant, or cooperative agreement exceeding \$100,000, or an award of a federal loan or a commitment providing for the United States to ensure or guarantee a loan exceeding \$150,000:

**a. Agency.**

- (1) Completes Lobbying Certification Form.
- (2) Includes in all award documents language requiring certification and disclosure of lobbying (see Enclosure 1).

**b. Grantee.**

- (1) Completes Lobbying Certification Form and, if applicable, Disclosure of Lobbying Activities form.
- (2) Forwards to agency completed Lobbying Certification Form(s) and, if applicable, Disclosure of Lobbying Activities forms.

**c. Agency.**

- (1) Receives from grantee(s) completed Lobbying Certification and Disclosure of Lobbying Activities Forms.
- (2) Forwards completed Lobbying Certification and Disclosure of Lobbying Activities Forms to federal agency as required.

Enclosure:

1 – Lobbying Certification Form

**This directive replaces, in its entirety, Management Directive 305.16 dated August 6, 1990, copy of which should be recycled.**

**APPENDIX F**

**LOBBYING CERTIFICATION FORM**

**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form- LLL, Disclosure of Lobbying Activities, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed under *Section 1352, Title 31, U. S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than **\$100,000** for such failure.

SIGNATURE:

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TITLE:

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DATE:

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## **APPENDIX G**

### **PROVISIONS CONCERNING *THE AMERICANS WITH DISABILITIES ACT***

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. §35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. §35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1 above.

## APPENDIX H

### NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE [Contracts]

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (PHRA) and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
4. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small

Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Contractor's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
8. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## APPENDIX I

### CONTRACTOR INTEGRITY PROVISIONS

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
  - a. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or the entities have a common proprietor or general partner.
  - b. **“Consent”** means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
  - c. **“Contractor”** means the individual or entity, that has entered into this contract with the Commonwealth.
  - d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of 5 percent or more interest in the Contractor.
  - e. **“Financial Interest”** means either:
    - i. Ownership of more than a five percent interest in any business; or
    - ii. Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - f. **“Gratuity”** means tendering, giving, or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the Governor’s Code of Conduct, Executive Order 1980-18, the 4 Pa. Code §7.153(b), shall apply.
  - g. **“Non-bid Basis”** means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.

2. In furtherance of this policy, Contractor agrees to the following:
- a. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting or procurement with the Commonwealth.
  - b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
  - c. Contractor, its affiliates, agents, employees and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
  - d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor's financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.
  - e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
    - i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
    - ii. been suspended, debarred or otherwise disqualified from entering into any contract with any governmental agency;
    - iii. had any business license or professional license suspended or revoked;
    - iv. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation or anti-trust; and

- v. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract if becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.) regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a).
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity Provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or the Office of the State Inspector General in writing.
- h. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract, certifies and represents that it has not violated any of these Contractor Integrity Provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the Contractor. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an Inspector General, shall provide, or if appropriate, make promptly available for inspection

or copying, any information of any type or form deemed relevant by the Office of the State Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.

- j. For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these Provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

## **APPENDIX J**

### **Contractor Responsibility Provisions**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.pa.gov> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## **APPENDIX K**

### **Offset Provision**

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the contractor under any contract with the Commonwealth.