

- 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.
 - 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.
 - 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 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

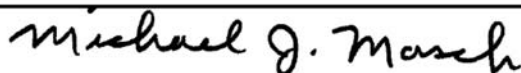
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Amended
Number

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.

- 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 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:

TITLE:

DATE:

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 it 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.