

STATE OF ILLINOIS
SMALL BUSINESS ENTERPRISES PARTICIPATION
AND UTILIZATION PLAN

ATTACHMENT NN

The grant between the FRA and the states allows small business participation on the Master Agreement (“Contract”). As grantees, IDOT and the JPEs agree to provide maximum practicable opportunities for small businesses.

- A. Contract Participation to be achieved by the Vendor:** This contract includes a specific Small Business Enterprise (“SBE”) utilization goal of 7% of the ~~total contract~~base order price. For purposes of meeting this goal, only participation by those businesses meeting any one of the definitions of a “Small Businesses Enterprise” as defined below shall be counted towards the goal.
- B. Eligibility:** In order to be eligible for award of this contract, the Vendor must ~~meet~~commit to meeting the 7% Small Business Enterprise utilization goal. The Vendor’s SBE Commitment Document and SBE Utilization Plan, as included in this section, will be submitted with the Final Offer. ~~Letters of Intent for each SBE must be submitted no later than 10 days of the date final proposals are due.~~ The intent of the goal is to maximize practicable opportunities for participation by certified Small Business Enterprises as defined herein; maximum participation by SBEs is encouraged.
- C. Valid Participation:** Participation of SBEs shall only be counted towards the goal if
- a. The SBE is certified or verified on the date the Vendor submits its Final Offer or requests subcontractor approval and remains certified throughout the term of its work on the contract; and
 - b. The SBE performs a commercially useful function on the contract.
- D. “Small Business Enterprises” or “SBEs”** shall include only those businesses meeting any one of the following definitions:
1. **“Small Business”** means
 - a. ~~a~~ small business concern as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto who has written certification that it meets the requirements applicable to its business as set forth thereunder; or
 - b. ~~a~~ small business that has received written certification from any state as any type of “small business”
 2. **“HUB Zone small business concern”** means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration. The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—
 - a. HUBZone small business database search application web page at <http://dsbs.sba.gov/dsbs/search/dspsearchhubzone.cfm>; or <http://www.sba.gov/hubzone>;
 - b. In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
 - c. The SBA HUBZone Help Desk at hubzone@sba.gov.
 3. **“Disadvantaged Business Enterprise or DBE”** means a for-profit small business concern that has received certification as a DBE consistent with 49 CFR part 26 and on the day of the Offer represents that:
 - a. No material change in DBE ownership and control has occurred since its certification;

- b. Where the concern is owned by one or more individuals, the personal net worth of each individual upon whom the certification is based does not exceed \$1.32 million in accordance with 49 CFR 26.67(a)(2).
- c. The DBE is identified, on the date of its representation and on the day of bid and throughout the time it performs work on the contract, as a certified DBE in any Unified Certification Program maintained pursuant to 49 CFR part 26 in any state.

4. **“Small disadvantaged business concern”** means a small business concern that has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B; and on the day of Offer represents that:

- a. No material change in disadvantaged ownership and control has occurred since its certification;
- b. Where the concern is owned by one or more individuals, the personal net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
- c. It is identified, on the date of its representation and on the day of bid and throughout the time it performs work on the contract, as a certified small disadvantaged business in the Dynamic Small Business Search database maintained by the Small Business Administration.

5. **“Service-disabled veteran-owned small business concern”**—

- a. Means a small business concern that has received written verification from the U.S. Veteran’s Administration and —
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
 - (iii) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16); or
- b. Has received written certification from any state as a service-disabled veteran owned small business.

6. **“Veteran-owned small business concern”** means

- a. ~~a~~ small business concern that
 - i. has received verification from the U.S. Veteran’s Administration and —
 - (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
 - (2) The management and daily business operations of which are controlled by one or more veterans; or
- b. ~~has~~Has received written certification from any state as a veteran owned small business.

E. **Guidelines for Vendor’s Response with Final Offer:** The SBE Commitment Document and the SBE Utilization Plan, included in this section, will be submitted with the Final Offer. Vendor should include any additional information that will add clarity to the Vendor’s proposed utilization of SBEs. The SBE Utilization Plan ~~must~~should document the Vendor’s intent to use specific SBEs and must list the name, address, type of certification and certification number (or verification number), and description of work of each SBE. Vendor must submit copies of current certifications for identified SBE subcontractors with the Final Offer. For those SBE subcontractors whose certifications are not included with the Final Offer, current certifications should be submitted with the

subcontractors' approval packet. Letters of Intent must be submitted with the request for subcontractor approval prior to the start of the subcontractor's work.

~~No later than 10 days of the date Final Offers are due, Vendors must submit Letters of Intent for each SBE, copies of current certifications (including, where applicable, VA verifications) for each SBE it intends to use on the contract, type of agreement, work, and payment information. The documents~~The SBE Commitment Document and SBE Utilization Plan will be evaluated by IDOT/JPEs for conformance with the requirements of this section. IDOT/JPEs reserve the right to waive minor informalities or request confirmation, or clarification, from any vendor regarding information contained in this section.

1. Valid Certification:

1.14. **At the time of submission of the Final Offer or prior to subcontractor approval, the SBE must meet the eligibility requirements and be fully certified as a small business by the United States Small Business Administration, United States Department of Veterans Affairs, or any state;**

1.15. ~~Within 10 days of the submission of the Final Offer, the~~The Vendor must provide documentation of the SBEs' written, valid certifications in accordance with the directions in Section E, above.

2. Non-Compete Prohibited: An agreement between a Vendor and a SBE in which the SBE promises not to provide subcontracting quotations to other vendors is prohibited. IDOT/JPE may request additional information to demonstrate compliance through IDOT's Contract Manager named in the contract. The Vendor and the SBE agree to cooperate promptly with IDOT/JPEs through IDOT's Contract Manager in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed SBE. Failure to cooperate may render the proposal non-responsive. **The contract will not be finally awarded until the Vendor's SBE Commitment Document and Utilization Plan ~~is~~are approved as a pass/fail element of the Final Offer.**

3. Vendor Assurance: The Vendor, sub-recipient or subcontractor shall act consistently with the nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender age, disability, and national origin—benefit from activities funded through Contract. Failure by the Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as IDOT/JPE deems appropriate. This assurance must be included in each subcontract that the Vendor signs with a subcontractor or supplier.

4. Calculating SBE Commitments for Participation (participation): The SBE Utilization Plan ~~and Letters of Intent document~~documents work anticipated to be performed by all SBEs and paid for upon satisfactory completion. Only the value of payments made for the work actually performed by the SBE is counted toward the contract participation. Counting guidelines are summarized below:

4.14. The value of the work actually performed by the SBE's own forces shall be counted towards the participation. The entire amount of that portion of the contract that is performed by the SBE's forces, including supplies purchased or equipment leased by the SBE shall be counted, except supplies purchased and equipment rented from the Vendor.

4.15. When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work shall be counted toward participation only if the SBE's subcontractor is a SBE. Work that a SBE subcontracts to a non-SBE will not count.

- 4.16. A Vendor shall count towards participation of SBEs 100% of its expenditures for materials and supplies required under the contract and obtained from a SBE manufacturer, regular dealer or supplier.
- 4.17. A Vendor shall count towards participation the following expenditures to SBEs that are not manufacturers, regular dealers or suppliers:
 - 4.17.1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services.
 - 4.17.2. The fees charged for delivery of materials and supplies required by the contract (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the IDOT/JPE to be reasonable and not excessive as compared with fees customarily allowed for similar services. The SBE trucking firm must supervise and manage the entire trucking operation for which it is responsible on the contract, and must itself own and operate at least one fully licensed, insured and operational truck used on the contract. For full credit for participation, the SBE may subcontract its work to other businesses that meet the definition of an SBE as set forth in this contract or to owner-operators. Full credit will not be given if the SBE subcontracts with a non-SBE. The SBE may not use any delivery equipment owned or leased by the Vendor. If the Vendor claims participation credit for transportation services by a SBE, it must provide documentation with its Offer proving that the SBE owns and has registered and insured the necessary equipment and, where applicable, has executed exclusive leases as described in 49 CFR section 26.55(d)(6). Where such documentation is submitted with the Offer, the participation of that SBE will be considered for credit toward the SBE utilization goal for purposes of evaluation of the Offer. Where such documentation is not submitted until after Award and during contract performance, participation by a SBE may be considered for additional credit if proper documentation is submitted to IDOT's Contract Manager.
- 4.18. A Vendor shall count towards participation expenditures to SBEs that perform a commercially useful function in the work of the contract as defined in 49 CFR 26.55.
 - 4.18.1. A SBE performs a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The SBE must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the material or supplies. To determine whether a firm is performing a commercially useful function, IDOT's Contract Manager shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
 - 4.18.2. A SBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SBE participation. In determining whether a SBE is such an extra participant, IDOT's Contract Manager shall examine similar transactions, particularly those in which SBEs do not participate.

4.18.3. IDOT's Contract Manager shall make the final determination as to whether a SBE is providing a commercially useful function during contract administration.

4.19. A Vendor shall not count towards the participation expenditures that are not direct, necessary and proximately related to the work of the contract. Only the amount of services or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include general office overhead or other Vendor support activities.

5. Contract Compliance: Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern the Vendor's compliance with the contractual obligations established by the SBE Commitment Document and SBE Utilization Plan. After award of the contract and approval of the SBE Commitment Document and Utilization Plan ~~and Letters of Intent, the SBE Utilization Plan becomes, these documents become~~ part of the contract.

5.14. The SBE Utilization Plan may not be amended without IDOT's Contract Manager's prior written approval.

5.15. The Vendor may not make changes to its contractual SBE commitments or substitute SBEs without the prior written approval of the IDOT's Contract Manager. Unauthorized changes or substitutions, including performing the work designated for a SBE with the Vendor's own forces, shall be a violation of the SBE Utilization Plan and a breach of the contract, and shall be cause to terminate the contract, and/or seek other contract remedies. The facts supporting the request for changes must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract. The Vendor must negotiate with the SBE to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the SBE can be substituted only where agreement cannot be reached for a reasonable price or schedule for the correct scope of work.

5.16. Substitutions of a SBE shall be permitted under the following circumstances:

5.16.1. Unavailability after receipt of reasonable notice to proceed;

5.16.2. Failure of performance;

5.16.3. Financial incapacity;

5.16.4. Refusal by the SBE to honor the bid or proposal price or scope;

5.16.5. Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

5.16.6. Failure of the SBE to meet insurance, licensing or bonding requirements;

5.16.7. The SBE's withdrawal of its bid or proposal; or

~~5.16.8-5.17.~~ Decertification of the SBE.

~~5.17-5.18.~~ If it becomes necessary to substitute a SBE or otherwise change the SBE Utilization Plan, the Vendor must notify IDOT's Contract Manager in writing of the request to substitute a SBE or otherwise change the SBE Utilization Plan. The request must state specific reasons for the substitution or change. IDOT's Contract Manager will approve or deny a request for substitution or other change in the SBE Utilization Plan within 5 business days of receipt of the request.

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~~5.18.5.19.~~ Where the Vendor has established the basis for the substitution to IDOT's Contract Manager's satisfaction, it must make good faith efforts, as defined by 49 CFR part 26, to meet the contract participation by substituting a SBE. Documentation of a replacement SBE, or of good faith efforts to replace the SBE, must meet the requirements of the initial SBE Utilization Plan. If the participation cannot be reached and good faith efforts have been made, the Vendor may substitute with a non-SBE upon written approval by IDOT's Contract Manager.

~~5.19.5.20.~~ If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the SBE Utilization Plan, the Vendor must obtain the written approval of the IDOT Contract Manager to modify the SBE Utilization Plan and must make good faith efforts to ensure that SBEs have a fair opportunity to bid on the new scope of work.

~~5.20.5.21.~~ A new subcontract must be executed and submitted to the IDOT Contract Manager within 5 business days of the Vendor's receipt of the IDOT Contract Manager's approval for the substitution or other change.

~~5.21.5.22.~~ The Vendor shall maintain a record of all relevant data with respect to the utilization of SBEs, including but without limitation, copies of SBE certifications, payroll records, invoices, canceled checks and books of account for a period of at least 5 years after the completion of the contract. Full access to these records shall be granted by the Vendor upon 48 hours written demand by the IDOT Contract Manager to any duly authorized representative thereof, or to any municipal, state or federal authorities. The IDOT Contract Manager shall have the right to obtain from the Vendor any additional data reasonably related or necessary to verify any representations by the Vendor. After the performance of the final item of work or delivery of material by a SBE and final payment to the SBE by the Vendor, but not later than 30 calendar days after such payment, the Vendor shall submit a statement confirming the final payment and the total payments made to the SBE under the contract.

~~5.22.5.23.~~ The IDOT/JPE will periodically review the Vendor's compliance with these provisions and the terms of its contract. Without limitation, the Vendor's failure to comply with these provisions or its contractual commitments as contained in the SBE Utilization Plan, failure to cooperate in providing information regarding its compliance with these provisions or its SBE Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status or eligibility of SBEs, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the IDOT/JPE to declare a default, terminate the contract, or exercise those remedies provided for in the contract or at law or in equity.

~~5.23.5.24.~~ The IDOT/JPE reserves the right to withhold payment to the Vendor to enforce these provisions and the Vendor's contractual commitments. Final payment shall not be made on the contract until the Vendor submits sufficient documentation demonstrating compliance with its SBE Utilization Plan and proof that upon completion of the contract it had met the 7% participation goal as measured by the final price of the contract.

~~5.24.5.25.~~ IDOT/JPEs will sustain significant damages as a result of the Vendor's failure to comply in its proposed SBE Utilization Plan and participation goal at the end of the Contract. These damages may be difficult to estimate but they include, and are not limited to, the following:

- Assurances made by the Vendor as a material representation of fact upon which reliance was placed by IDOT/JPEs in entering into the Contract with the Vendor;

- Increased costs of Contract administration, including costs to reconcile the amount of participation achieved;
- Loss of SBE participation as a grant requirement.

The Contract will provide an acknowledgement by the Vendor that IDOT/JPEs will incur actual damages should the Vendor fail to perform in regard to the SBE Utilization Plan. The Contract will provide that there is a damage charge of the amount of the SBE participation goal that is not met by the Vendor as rounded down to the nearest tenth of a percent. Liquidated damages will be deducted from any monies due, or that may become due, to the Vendor.

IDOT/JPEs may waive the liquidated damages for substantial compliance where circumstances causing the failure to meet the participation goal are clearly beyond the control of the Vendor or where it is in the interest of IDOT/JPEs to do so.

5-25-5.26. **SBE COMMITMENT DOCUMENT**

The SBE COMMITMENT DOCUMENT ~~and SBE UTILIZATION PLAN~~ must be submitted with the Final Offer. ~~The LETTERS OF INTENT must be submitted no later than 10 days of the submission of the Final Offer. The LETTERS OF INTENT must be sealed separately from the SBE COMMITMENT DOCUMENT and SBE UTILIZATION PLAN within the offer packet .~~

The SBE Goal for this contract is 7%.

[Click here to enter text.](#) submits the following SBE Utilization Plan as part of our proposal in accordance with the requirements of the Small Business Enterprises Participation section of the solicitation for [Click here to enter text.](#), Illinois Transportation Procurement Bulletin Reference Number [Click here to enter text.](#). We understand that compliance with this section is an essential part of this contract and that the SBE Utilization Plan will become a part of the contract.

[Click here to enter text.](#) makes the following assurance and agrees to include the assurance in each subcontract with a subcontractor or supplier utilized on this contract: We shall not discriminate on the basis of race, color, national origin, sexual orientation or sex in the performance of this contract. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the IDOT/JPE deems appropriate.

Vendor's person responsible for compliance:

Name: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Telephone: [Click here to enter text.](#)

Email: [Click here to enter text.](#)

We submit one (1) of the following statements:

- We are a SBE and plan to fully meet the SBE contract participation through self-performance.
- We understand that in order to be eligible for award of this contract, we must meet the Small Business Enterprises Participation Goal of 7% of the total contract base order price. We represent that we ~~have met that~~ will meet the SBE goal as demonstrated in our SBE UTILIZATION PLAN ~~attached by the end of contract performance. Subject to our sealed price proposal and the LETTERS OF INTENT that will~~ corresponding SBE Subcontractor approval by IDOT/JPE, the SBE UTILIZATION PLAN may be submitted no later than 10 days of the Final Offer, amended during contract performance.

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~~5.26.5.27.~~ **SBE UTILIZATION PLAN**

~~5.26.1.5.27.1.~~ Part I - Utilization of SBEs

Please submit a separate Part I for **each** proposed SBE. To achieve the SBE contract participation through subcontracting at any tier, the following is proposed:

~~5.26.1.1.5.27.1.1.~~ The SBE's company name, address and phone number:

Name: [Click here to enter text.](#)

Address: [Click here to enter text.](#)

Phone Number: [Click here to enter text.](#)

At the time of submission, the above certified vendor is:

Certified as _____ (an SBE as defined in Paragraph D of this Attachment NN). The certifying state or federal agency issuing the certification shall be entered below:

[Click here to enter text.](#)

~~5.26.1.2.5.27.1.2.~~ A detailed description of the commercially useful work to be done by this SBE is as follows:

[Click here to enter text.](#)

~~5.26.1.3.5.27.1.3.~~ The Vendor ~~has~~or its subcontractor, have not prohibited or otherwise limited _____ [Click here to enter text.](#) from providing subcontractor quotes to other potential bidders/vendors.

5.27.1.4. If the SBE company is identified prior to submission of the Final Offer, please attach the certification identified in 5.27.1.1.

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~~5.26.2.~~ **Letter of Intent (LOI) Between Prime Vendor and Certified/Verified Vendor**

Instructions: ~~The Prior subcontractor's start of work, the responsive Vendor is or its subcontractor, are~~ required to submit this signed and notarized Letter of Intent from each SBE identified on the SBE Utilization Plan. ~~LOIs must be submitted within 10 days of the Offer and must be notarized by both parties. Submit Additionally, a separate LOI is required for each proposed change to the SBE. The amount and scope of work indicated on each LOI shall be the actual amount indicated on the Utilization Plan, and request for subcontractor approval. LOIs must be submitted with the proposal and approved by the IDOT/JPE request for subcontractor approval..~~

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Changes to the SBE Utilization Plan, including the addition or substitution of SBEs, may be permitted after award of the contract and only with prior written approval of IDOT's Contract Manager. A request for changes to the SBE Utilization Plan must be submitted ~~on with~~ the ~~Request request~~ for ~~Change of Utilization Plan Form~~ subcontractor approval for all levels of subcontracting. ~~LOIs must be submitted for all additions of SBEs to the Utilization Plan~~ prior to the start of the subcontractor's work.

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Project Name ~~Click here to enter text.~~ _____

Project/Solicitation Number: ~~Click here to enter text.~~

Name of Prime Vendor: ~~Click here to enter text.~~ or Subcontractor¹:

Address: ~~Click here to enter text.~~

City, State and Zip: ~~Click here to enter text.~~

Telephone: ~~Click here to enter text.~~ Fax: ~~Click here to enter text.~~ Email: ~~Click here to enter text.~~

Name of SBE: ~~Click here to enter text.~~

Address: Address: ~~Click here to enter text.~~

City, State and Zip: ~~Click here to enter text.~~

Telephone: ~~Click here to enter text.~~ Fax: ~~Click here to enter text.~~ Email: ~~Click here to enter text.~~

Type of agreement: Services Supplies Both
Supplies /Services

Type of payment: Lump Sum ~~Click here to enter text.~~

Hourly Rate: ~~Click here to enter text.~~

¹ Subcontractor with a lower tier SBE subcontractor.

Unit Price: ~~Click here to enter text.~~

Period of Performance: ~~Click here to enter text.~~

Proposed Subcontract Amount \$~~Click here to enter text.~~ or Proposed % of Contract ~~Click here to enter text.~~

Description of work to be performed by SBE:

~~Click here to enter text.~~

List the certifying state or federal agency issuing the certification and the type of SBE (as as defined in Paragraph D of this Attachment NN):

~~Click here to enter text.~~

The prime vendor or subcontractor, and the SBE above hereby agree that upon the execution of a contract for the above-named project between the prime vendor and the State of Illinois, the SBE will perform the scope of work for the price as indicated above.

Prime Vendor or subcontractor (Company Name and D/B/A): _____ SBE (Company Name and D/B/A): _____

~~Click here to enter text.~~ _____ ~~Click here to enter text.~~

Signature

Signature

Printed Name: ~~Click here to enter text.~~ _____
~~Click here to enter text.~~

Printed Name:

Title: ~~Click here to enter text.~~ _____
~~to enter text.~~

Title: ~~Click here~~

Date: ~~Click here to enter text.~~ _____
~~enter text.~~

Date: ~~Click here to~~

Subscribed and sworn before me this

Subscribed and sworn before me this

_____ day of _____, 20____
____, 20__

_____ day of _____

Notary Public
My Commission expires: _____

Notary Public
My Commission expires: _____

