
APPENDIX B

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

FQ12099/MC
Mariana Coefield

PART V

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

1. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENT:

The DBE requirements of the Authority's DBE Program Plan apply to this Contract. Accordingly, the Contractor shall carry out the requirements of the Authority's DBE Program Plan and this Appendix in the award and administration of U.S. Department of Transportation (US DOT) assisted contracts.

2. POLICY:

It is the policy of the Authority (WMATA), the Federal Transit Administration (FTA) and the US DOT that Disadvantaged Business Enterprises (DBE's) shall compete fairly to receive and participate in performing federally assisted contracts, including contracts and subcontracts at any tier. It is further the policy of the Authority, the FTA and the US DOT that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts. The Contractor hereby agrees to carry out this policy in the award and administration of subcontracts to the fullest extent possible consistent with efficient Contract performance.

3. CONTRACT GOAL:

- A. If the bidder/proposer is not a DBE, then the bidder/proposer agrees that the DBE goal for this Contract will be met by subcontracts or by joint ventures with DBE's. The goal set forth for this Contract is 20 % of the final Contract price, including amendments and modifications. The amount of DBE participation will be determined by the dollar value of the work performed and/or supplies furnished by DBE firms as compared to the total value of all work performed and/or supplies furnished under this Contract. The Contractor shall have met this goal if the Contractor's DBE participation meets or exceeds this goal.
- B. In cases where work is added to the Contract by modification such that additional DBE participation is necessary to meet this goal, the Contractor shall increase the participation of one or more firms listed on the "Schedule of DBE Participation" or submit additional DBE firms to meet the goal. In cases where work is deleted from the Contract, the goal shall be applicable to the new Contract amount. The Contractor shall be permitted to meet the goal by revising its DBE participation, provided, however, that the revision shall not result in DBE participation that is less than the original goal.

Applies only if bid/proposal price is \$500,000 or more for a construction contract or \$100,000 or more for a supply and service contract.

4. DEFINITIONS:

- A. **Contractor.** Contractor means one who participates, through a contract or subcontract (at any tier), in a US DOT assisted highway, transit or airport program.

- B. **DBE.** A DBE means a for-profit small business concern that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- C. **Good Faith Efforts.** “Good faith efforts” means efforts to achieve a DBE goal or other requirements of the Authority’s DBE Program Plan which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal program requirement.
- D. **Joint Venture.** Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture is commensurate with its ownership interest.
- E. **Personal Net Worth.** Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the individual’s ownership interest in an applicant or participant DBE firm; or the individual’s equity in his or her primary place of residence. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.
- F. **Race-conscious.** Race-conscious means a measure or program this is focused specifically on assisting only DBEs, including women-owned DBEs.
- G. **Race-neutral.** Race-neutral means a measure or program that is, or can be, used to assist all small businesses. For the purposes of the DBE program, race-neutral includes gender-neutrality.
- H. **Small Business Concern.** Small business concern means, with respect to firms seeking to participate as DBE’s in US DOT assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).
- I. **Socially and Economically Disadvantaged Individual.** The phrase “socially and economically disadvantaged individual” means any individual who is a citizen (or other lawfully admitted permanent resident) of the United States and who is any individual who the Authority finds to be a socially and economically disadvantaged individual on a case-by-case basis, and any individual in the following groups, members of which are rebuttally presumed to be socially and economically disadvantaged:
- (1) Black Americans, which includes persons having origins in any of the Black racial groups of Africa;

- (2) Hispanic Americans, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) Native Americans, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians?
- (4) Asian-Pacific Americans, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the North Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) Subcontinent Asian Americans, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) Women; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

J. **US DOT Assisted Contract.** US DOT assisted contract means any contract between the Authority and a contractor (at any tier) funded in whole or in part with US DOT financial assistance, including letters of credit or loan guarantees.

5. HOW DBE PARTICIPATION IS COUNTED TOWARDS THE CONTRACT GOAL:

DBE participation shall be counted towards meeting the DBE goal in accordance with the following:

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted towards the DBE goal.
 - (1) This amount includes the entire amount of that portion of a construction contract that is performed by the DBE's own forces. This amount includes the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
 - (2) This amount includes the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract, towards the DBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
 - (3) When a DBE subcontracts part of its work under the contract to another firm, the value of the subcontract work may be counted towards the DBE goal 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 DBE goal.
- B. When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that DBE performs with its own forces towards the DBE goal may be counted.

- C. Expenditures to a DBE contractor towards the DBE goal may be counted only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function 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 commercially useful function, 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, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Authority will consider the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE 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 DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work, the Authority will presume that the DBE is not performing a commercially useful function.
- D. The following factors will be used by the Authority in determining whether a DBE trucking company is performing a commercial useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible for on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
 - (2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it 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 certified as a DBE. The DBE who leases trucks from another DBE receives credit for 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. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) The lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the terms 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.

- E. The following factors will be used to count expenditures with DBE's for materials or supplies towards the DBE goal:
- (1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted towards the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the contract.
 - (2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted towards the DBE goal. A regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described 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 in this paragraph if this person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
 - (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, 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 and supplies required on a job site, may be counted towards the DBE goal, provided the fees are reasonable and are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted towards the DBE goal.
- F. Participation by a firm that is not currently certified as a DBE by the Authority at the time of contract award, does not count towards the DBE goal. Effective March 4, 2002, all DBE firms must be pre-certified: certification of firms must be in place prior to the due date of bids and proposals on which the firm wishes to participate as a DBE.
- G. The dollar value of work performed under the contract by a firm whose DBE certification has expired, does not count towards the DBE goal.
- H. The participation of a DBE subcontractor does not count towards the Contractor's DBE goal until the amount being counted towards the goal has been paid to the DBE.

6. BID AND PROPOSAL REQUIREMENTS (WITH THE BID/PROPOSAL):

The bidder/proposer shall submit the following with their bid/proposal. Any bidder/proposer who fails to complete and return this information with their bid/proposal shall be deemed to be not responsible and may be ineligible for contract award. Bidders/proposers that fail to meet the DBE goal above and fail to demonstrate “good faith efforts” to justify waiver of the DBE goal (see paragraph 6.C. below) shall be deemed to be not responsible and will be ineligible for Contract award.

- A. Completed “Schedule of DBE Participation” (Page B-12) with WMATA pre-certified DBEs sufficient to meet the above goal. If the bidder/proposer is a DBE firm and intends to satisfy the appropriate DBE requirement with its own firm, he/she must indicate in the Schedule the area of work and percentage it will perform to satisfy the goal.
- B. Executed “Letters of Intent to Perform as a Subcontractor/Joint Venture” (Page B-13). If the bidder/proposer is not a DBE then he/she must attach these letters from each DBE listed on the Schedule.
- C. Justification for grant of relief (waiver of DBE goal). If in the submittal of its bid/proposal, the bidder/proposer fails to meet the DBE goal above, the bidder/proposer has the burden of furnishing sufficient documentation with its bid/proposal of its “good faith efforts” to justify a grant of relief (waiver) from the goal or portion of the goal. Such justification shall be in the form of a detailed report. The following is a list of actions which shall be considered as part of the bidder’s/proposer’s good faith efforts to obtain DBE participation. This list is neither a mandatory checklist nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid/proposal meetings, advertising and/or written notices) the interest of all certified DBE's who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBE's to respond to the solicitation. The bidder/proposer must determine with certainty if the DBE's are interested by taking appropriate steps to follow up initial solicitations.
 - (2) Selecting portions of the work to be performed by DBE's 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 prime contractor might otherwise prefer to perform these work items with its own forces.
 - (3) Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - (4) (a) Negotiating in good faith with interested DBE's. It is the bidder's/proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material

needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE's 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 DBE's to perform the work. "DBE Unavailability Certifications" (Page B-14) shall be completed as appropriate.

- (b) A bidder/proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as the contract goal into consideration. However, the fact that there may be some additional costs involved in finding and using DBE's is not in itself sufficient reason for a bidder's/proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBE's if the price difference is excessive or unreasonable.
- (5) Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor'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/proposals in the contractor's efforts to meet the project goal.
- (6) Making efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (8) Effectively using the 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 DBE's.

7. CONTRACT ADMINISTRATION REQUIREMENTS:

The following requirements apply after contract award:

- A. The Contractor shall include the following provision in each subcontract it awards in support of the Appendix B DBE goal:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure

by the contractor to carry out these requirements is a material breach of this contract, which may result in termination of this contract or such other remedy as the Buyer deems appropriate.

- B. The Contractor shall monitor the performance of, collect and report data on DBE participation to the Office of Civil Rights, on the attached "Prompt Payment Report-Prime Contractor's Report" (page B-20) and "Prompt Payment Report-Subcontractor's Report" (Page B-21), which shall be submitted monthly with each payment request. Failure to submit these reports may result in suspension of contract payments. The Contractor shall certify with each payment request that payment has been or will be made to all subcontractors due payment, within ten (10) days after receipt of payment from the Authority for work by that subcontractor. The Contractor shall inform the COR or AR, with their payment request, of any situation in which scheduled subcontractor payments have not been made.
- C. The Contractor shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth above in this Appendix. The Contractor shall not have work performed nor the materials or supplies furnished by any individual or firm other than those named in the "Schedule of DBE Participation". If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for a DBE contractor named in the "Schedule of DBE Participation", the Contractor shall, within ten (10) days, notify the contracting officer or other delegated authority's representative of that fact in writing. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:
- (1) Failure to qualify as a DBE.
 - (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
 - (3) Dissolution, if a corporation or partnership.
 - (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor's ability to perform.
 - (5) Inability to furnish a reasonable performance or payment bond, if required.
 - (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
 - (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
 - (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to the Contractor prior to the Contractor's submission of its bid/proposal, but only where the contracting officer or other delegated authority's representative can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder/proposer obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.

- (9) Failure to comply with the terms and conditions of this Contract or those of its subcontract or joint venture agreement.

Within 30 days thereafter, the Contractor shall, if necessary to achieve the Appendix B goal, make every reasonable effort to subcontract the same or other work to other DBE firms. The Contractor must have the prior written approval of the contracting officer or other delegated authority's representative and the Office of Civil Rights before substitution for a DBE subcontractor, regardless of the reason for substitution. Failure to obtain Authority approval could result in the Contractor being found non-compliant with the requirements of Appendix B.

- D. The contractor shall forward copies of all subcontracts to the Office of Civil Rights at the time of their execution.
- E. If the contracting officer or other delegated authority's representative determines that the Contractor has failed to comply with this Appendix B, he will notify the Contractor of such non-compliance and the action to be taken. The Contractor shall, after receipt of such notice, take corrective action. If the Contractor fails or refuses to comply promptly, the contracting officer or other delegated authority's representative may issue a "stop work order" stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop work order shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor. When the Authority proceeds with such formal actions, it has the burden of proving that the Contractor has not met the requirements of this Appendix, but the Contractor's failure to meet its Appendix B goal shall shift to it the requirement to come forward with evidence to show that it has met the good faith requirements of this Appendix. Where the Contractor, after exhausting all its administrative and legal remedies and procedures is found to have failed to exert a "good faith effort" to involve DBE's in the work as herein provided, the Authority may declare the Contractor ineligible to receive further Authority contracts for three years from the date of the finding.
- F. The Contractor agrees to cooperate in any studies or surveys as may be conducted by the Authority which are necessary to determine the extent of the Contractor's compliance with this Appendix.
- G. The Contractor shall keep records and documents for two years following performance of this Contract to indicate compliance with this Appendix. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted upon request together with any other compliance information which such representative may require.
- H. If the Authority, the FTA or the US DOT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements regarding the DBE Program, the matter shall be referred to the Office of Civil Rights.
- I. Failure by the Contractor to carry out the requirements of this Appendix is a material breach of this Contract, which may result in the termination of this Contract under the Default provision of this Contract or such other remedy as the Authority deems appropriate.

8. SUMMARY OF SUBMITTALS

A. With the Bid/Proposal

1. Completed "Schedule of DBE Participation" (Page B-12) with WMATA pre-certified DBEs.
2. Executed "Letters of Intent to Perform as a Subcontractor/Joint Venture" (Page B-13).
3. Justification for grant of relief (waiver of DBE goal), if applicable. Include completed "DBE Unavailability Certifications" (Page B-14) as appropriate

B. Bid and Proposal Requirements (Apparent Successful Bidder/Proposer)

1. Copy of the current WMATA certification letter for each proposed DBE.
2. DBE Manufacturer's Affidavit, if applicable, must be submitted in order to receive 100 percent of the allowable credit for expenditures to DBE manufacturers/suppliers (page B-19).
3. Schedule B Information for Determining Joint Venture Eligibility, if applicable (pages B-22, B-23, B-24 & B-25).
4. Copy of Joint Venture Agreement, if applicable
5. Certification letter of the DBE regular dealer/supplier, if applicable

Certification letter of the DBE regular dealer/supplier, if applicable. If the bidder/proposer wants to receive the maximum allowable credit of its expenditures for material(s) or supplies required under this Contract, from -DBE regular dealers/suppliers, the DBE must submit a signed and notarized statement on their letterhead, that they are a regular dealer of the material(s) or supplies. By submission of this statement, the bidder/proposer certifies that it is satisfied that the subcontractor is a regular dealer/supplier that meets the requirements of 49 CFR Part 26.

C. After Contract Award

1. Prompt Payment Report-Prime Contractor's Report" (page B-20) – submitted monthly.
2. Prompt Payment Report-Subcontractor's Report" (Page B-21) - submitted monthly
3. Request to substitute DBE contractor (see paragraph 8.C.) – submitted as required.
4. Copies of subcontracts-submitted at the time of their execution.

SUBMIT WITH BID/PROPOSAL
SCHEDULE OF DBE PARTICIPATION

Contract No.

Project Name

_____ **Name of Bidder/Proposer**

The bidder/proposer shall complete this Schedule by identifying only those DBE firms, with scope of work and price, who have agreed to perform work on this Contract. The prices for the work/supplies of these firms shall be at prices amounting to at least the DBE percentage goal of the total contract price. The bidder/proposer agrees to enter into a formal agreement with the DBE firm(s) listed for the work and at, or greater than, the prices listed in this Schedule subject to award of a Contract with the Authority. If the total amount is less than the DBE percentage goal, a justification for waiver of DBE goal shall be attached to this Schedule.

Name of DBE Subcontractor	DBE	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ DBE Subcontractors			Subtotal	
Name of DBE Prime Contractor	DBE	Address	Type of Work (Electrical, Paving, Etc.) and Contract Items or Parts Thereof to be Performed and Work Hours Involved	Agreed Price
Subtotal \$ DBE Prime Contractor			Subtotal	
TOTAL \$ ALL DBE CONTRACTORS			TOTAL	

_____ **Signature of Contractor Representative**
 _____ **Title**
 _____ **Date**

M 23.26a (Rev 11/99)

SUBMIT WITH BID / PROPOSAL

10. DBE UNAVAILABILITY CERTIFICATION

I, _____, _____, _____ of _____
(Name) (Title) (Bidder/Proposer)

certify that on _____ I contacted the following minority contractor to obtain a proposal for
work

_____ to _____ be performed on _____ Contract Number
(Date)

<u>DBE Contractor</u>	<u>Work Items Sought</u>	<u>Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.)</u>
-----------------------	--------------------------	--

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

Signature:

Date:

_____ was offered an opportunity to bid on the above
(Name of DBE Contractor)

identified work on _____ by _____
(Date) (Source)

The above statement is true and accurate account of why I did not submit a bid on this project.

(Signature of DBE Contractor)

(Title)

M

 23.25 (Rev 10/99)

11.

DBE Certification Instructions

Important Notice

If you do not have a current official letter of certification from WMATA, you must comply with the procedures that follow in order to be eligible to participate in WMATA's Disadvantaged Business Enterprise (DBE) Program.

Instructions

If you currently hold a valid DBE Certification status with either the Maryland Department of Transportation (MDOT); or the U.S. Small Business Administration, 8a Program (SBA-8a), forward a copy of the official certification letter along with the WMATA Affidavit. In addition, submit the pertinent documents for your company listed below. The affidavit form should be completed in full and **NOTARIZED**.

General (All firms must submit documents under General)

- Current (unaudited) Financial Statements
- Prior three (3) years Federal Tax Returns
- Resume of Principal(s) and Key Personnel
- Third Party Agreements, such as Rental and Management Agreements
- Licenses to Do Business
- Personal Net Worth (PNW) Statement
- Statement of Disadvantage
- No Change Affidavit or Notice of Change (where applicable)

Corporations

- Articles of Incorporation
- By-Laws
- Stock Ownership Options
- Copy of Stock Certifications of Each Holder
- Copy of Voting Rights
- Record of First Organizational Meeting

Partnerships

- Partnership Agreement

Proprietorships

- IRS Employer ID Number
- WMATA Vendor ID#

Recertification Review

Once certified you will be required, every three years, to resubmit for our review an updated **NOTARIZED** WMATA DBE Affidavit form along with the latest income tax return and copies of any of the above cited documents that may have changed since your initial certification. This should include updated letters of certification from MDOT or SBA-8a if your initial WMATA Certification was based upon prior certification under either of these programs. (NOTICE: In-person interviews may be scheduled at WMATA facilities and scheduled or unscheduled visits to your place of business may be conducted at the direction of WMATA staff.)

AFFIDAVIT ENCLOSURE

NOTE: When completing Disclosure Affidavit, complete all information blocks. Type "N/A" if item does not apply to you or your firm.

23.22 (10/99)



12. CURRENT COMPANY OFFICERS:
ETHNIC

NAME AND POSITION	GROUP	SEX	DATE OF SERVICE	FULL ADDRESS
			WITH COMPANY	COMPANY
			(Number, Street, City, State, Zip)	
---	---	---	---	---
---	---	---	---	---
---	---	---	---	---



13. PRIOR BOARD OF DIRECTORS AND/OR COMPANY OFFICERS:

NAME AND POSITION	ETHNIC GROUP	SEX	DATE	OF	SERVICE
			WITH COMPANY		(Number, Street, City, State, Zip)
			FULL ADDRESS		
---	---	---	---	---	---
---	---	---	---	---	---
---	---	---	---	---	---

14. CURRENT COMPANY OFFICERS:

NAME AND POSITION	ETHNIC GROUP	SEX	INTEREST OR SHARES OWNED		VOTING PERCENTAGE
			DATE OF OWNERSHIP	(Class & Quantity)	
---	---	---	---	---	---
---	---	---	---	---	---
---	---	---	---	---	---

15. NUMBER OF SHARES AUTHORIZED, ISSUED & OUTSTANDING:

Preferred
Common
Other

16. INDICATE SOURCE(S) AND AMOUNT OF CAPITAL INVESTED IN COMPANY BY PERSONS AFFILIATED WITH THE ENTERPRISE:

Source	Amount
---	---
---	---

17. IDENTIFY YOUR BONDING COMPANY, BANK AND SOURCES OF LETTERS OF CREDIT:

Bonding Company	Bank	Letter of Credit
---	---	---
---	---	---

18. WHAT IS YOUR BONDING LIMIT?

\$

19. WHO DETERMINES WHAT JOBS THE COMPANY WILL UNDERTAKE? (Name and Title)

20. WHO NEGOTIATES FOR SURETY BONDS AND SIGNS FOR INSURANCE AND PAYROLL?

<u>Surety and/or Performance Bonds</u>	<u>Payroll</u>	<u>Insurance</u>	21. WHO WILL BE RESPONSIBLE FOR ONSITE PROJECT SUPERVISION? (Name and Title)

22. LIST THE THREE LARGEST PROJECTS IN DOLLAR AMOUNTS COMPLETED BY YOUR COMPANY DURING THE LAST THREE YEARS; INDICATE PRIME CONTRACTORS OF THESE PROJECTS OR PROCUREMENTS:

<u>PRIME</u>	<u>PROJECT/PROCUREMENT</u>	<u>DOLLAR AMOUNT</u>	<u>DATE COMPLETED</u>	<u>CONTRACTOR</u>

23. PRIOR AND CURRENT COMPANY CLIENTS: (Company Name, Street Address, City, State, Zip)
(Attach if necessary)

24a. LIST MAJOR EQUIPMENT: 24b. LIST ALL PRODUCTS AND/OR SERVICES RENDERED:
TYPE QUANTITY PRODUCTS OR SERVICES

25. REMARKS:

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of (name of firm as well as the ownership thereof). Further, the undersigned agrees to provide through the prime contractor, or if no prime directly to WMATA, current complete and accurate information regarding actual work performed on any project, the payment therefo, and any proposed changes of any of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

If, after filing this Affidavit and before the work of this firm is completed on any contract covered by this regulation, there is any significant change in the information submitted, you must inform WMATA of the change through the prime contractor or, if no prime contractor, inform WMATA directly.

It is recognized and acknowledged that the information provided hereinabove may be used by WMATA for the purpose of certifying the authenticity of the disadvantaged status of the applicant firm.

Trade secrets, information privileged by law and confidential commercial, financial, geological or geophysical data furnished will be protected by WMATA.

Signature of Affiant

Printed Name

.....

Date: _____ State: _____ County: _____

On this ___ day of _____, 20___, before me appeared

_____ (Name)
to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that
he or she was properly authorized by

_____ (Name of Firm)
to execute the Affidavit and did so as his or her free act and deed.

Sworn and subscribed before me _____ (Seal)
(Notary Public)

Commission Expires: _____ 3 of 3

M 23.06c (Rev 10/99)

13.

DBE MANUFACTURER'S AFFIDAVIT

I hereby declare and affirm that I am
(Title)
and duly authorized representative of _____ (Name of Company),
a _____ owned and controlled enterprise
whose address is

I further declare and affirm that company employees (persons not on the payroll of and/or performing the same tasks for disadvantaged owned business having any interest in the affiant's business) operate the following company equipment relative to the manufacturing process:

Equipment

Type Function Model Age Make

Number of employees involved in the manufacturing process:

The undersigned swears that the foregoing statements are true and correct and fully understands that WMATA may rely on these statements in determining whether a WMATA prime contractor purchasing goods from the undersigned's manufacturing concern is entitled to a 100% credit of such purchases towards its DBE goal. The undersigned further understands that any material misrepresentation will be grounds for initiating action under Federal or state laws concerning false statements.

Signature of Affiant Printed Name

.....
..

Date: _____ State: _____ County: _____

On this _____ day of _____, 19_____,

before _____ me _____ appeared

(Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that he

or she was properly authorized by

(Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) Sworn and subscribed before me

(Notary Public)

Commission

Expires:

23.29 (10/99)



**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

**14. PROMPT PAYMENT REPORT
PRIME-CONTRACTOR'S REPORT**

This Report is required to be submitted to the Office of Civil Rights, DBE Branch pursuant to requirements of WMATA's DBE Program plan §2.5 and §26.29 of 49 CFR Part 26.

Contract No.: _____

Name _____ **of** _____ **Prime Contractor:** _____

Project Name: _____

<i>Name of Sub-Contractor</i>	<i>DBE (Y/N)</i>	<i>Type of Work</i>	<i>Date Work Accepted</i>	<i>Work Hours</i>	<i>Agreed Upon Price</i>	<i>Amount Paid</i>	<i>Date of Payment</i>

Name and Title

Signature

Date

16.

Information for Determining Joint Venture Eligibility

Page 1

.....
..

Name and address of Joint Venture:

Contact Person: Telephone:

Have you attached a copy of the Joint Venture agreement? [] Yes [] No

NOTE: Affidavit will not be processed without a copy of the Joint Venture agreement.24

.....
..

Name and address of Joint Venture partner:

Contact Person: Telephone:

Status of firm: [] DBE [] Nonminority

Does firm have current WMATA DBE certification? [] Yes [] No

.....
.....

Name and address of Joint Venture partner:

Contact Person: Telephone:

Status of firm: [] DBE. [] Nonminority.

Does firm have current WMATA DBE certification? [] Yes [] No

.....
.....

Describe the nature of the Joint Venture business:

Describe the role in the Joint Venture of each partner listed above:

Describe the experience and business qualifications of each partner in the Joint Venture listed above:

.....
.....

23.29 (10/99)



Information For Determining Joint Venture Eligibility

.....
..
Indicate the percentage of ownership in the Joint Venture for each Joint Venture partner, indicating dollar amounts wherever applicable.

<i>Name of Partner</i>	<i>Percentage of Ownership</i>	<i>Profit and Loss Sharing</i>	<i>Capital Contributions including Equipment</i>	<i>Other Agreements</i>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

TOTALS:

.....
Identify by name, title, race, sex and company affiliation those individuals responsible for the management control of and participation in this contract:

1. *Financial decisions, such as payroll, insurance, surety and/or bonding requirements:*

Name: _____ Race: _____

Title: _____ Sex: Male Female
Company _____ affiliation: _____

2. *Management decisions, such as estimating, marketing and sales, hiring and firing, purchasing supplies:*

Name: _____ Race: _____

Title: _____ Sex: Male Female
Company _____ affiliation: _____

3. *Supervision of field operations:*

Name: _____ Race: _____

Title: _____ Sex: Male Female
Company _____ affiliation: _____

.....
..

M

Information For Determining Joint Venture Eligibility

Page 3

.....
..

The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our following named Joint Venture:

and the intended participation by each Joint Venturer in the undertaking. Further the undersigned covenant and agree to provide the Authority current, complete and accurate information regarding actual Joint Venture work and the payment thereof and any proposed changes in any of the Joint Venture arrangements and to permit the audit and examination of the books, records and files of the Joint Venture, or those of each Joint Venturer relevant to the Joint Venture, by authorized representatives of the Authority or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements.

It is recognized and acknowledged that the Authority's DBE Program shall have access to the information provided herein above for the purpose of establishing eligibility and authenticity of the minority status of the Joint Venture.

It is understood that trade secrets and information privileged by law, as well as commercial, financial, geological and geophysical data furnished will be protected.

(NAME OF SECOND FIRM)

(SIGNATURE OF AFFIANT)

(PRINT NAME))

(TITLE)

(DATE)

.....
..

23.29 (10/99)



Information For Determining Joint Venture Eligibility

Page 4

.....
..

Date: _____ State: _____ County: _____

On this _____ day of _____,
19_____,

before _____ me _____ appeared
_____ (Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that
he or she was properly authorized by
_____ (Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) _____ Sworn and subscribed before me
_____ (Notary Public)

Commission Expires:

.....

Date: _____ State: _____ County: _____

On this _____ day of _____,
19_____,

before _____ me _____ appeared
_____ (Name)

to me personally known, who, being duly sworn, did execute the foregoing Affidavit, and did state that
he or she was properly authorized by
_____ (Name of Firm)

to execute the Affidavit and did so as his or her free act and deed.

(Seal) _____ Sworn and subscribed before me
_____ (Notary Public)

Commission Expires:



23.06c (Rev 10/99)

PAGE INTENTIONALLY

LEFT BLANK