

SMALL DIVERSE BUSINESS and VETERAN BUSINESS ENTERPRISE PARTICIPATION

The following provisions apply:

A. SDB and VBE Participation Goals

1. All Bidders shall refer to the following Attachments, Instructions for Completing the Small Diverse Business (“SDB”) Participation Submittal and SDB Utilization Schedule and Instructions for Completing the Veteran Business Enterprise (“VBE”) Participation Submittal and VBE Utilization Schedule (individually or together, “Instructions”), for submittal requirements.
2. The Department of General Services (“DGS”) has established both SDB and VBE participation goals for utilization of SDB and VBE subcontractors, manufacturers, and suppliers for this Project.

B. Upon Bid Opening

The Bidder’s SDB and VBE submittals will be reviewed for responsiveness according to the Contract Documents. Failure to submit an SDB Participation Submittal (which must include the SDB Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both) and a VBE Participation Submittal (which must include the VBE Utilization Schedule, the Good Faith Efforts Documentation to Support Waiver Request, or both) for each base bid with an SDB and/or VBE participation goal will result in rejection of a bid as non-responsive. Also, failure to submit a complete SDB Participation Submittal and a complete VBE Participation Submittal with each base bid consistent with the Instructions in the Contract Documents may result in rejection of a bid as non-responsive.

C. Upon Contract Execution

1. SDB and VBE Participation Documents. All documents completed and submitted by the Contractor in connection with its SDB Participation Submittal (including the SDB Participation Submittal, SDB Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of SDB Participation Goal) and its VBE Participation Submittal (including the VBE Participation Submittal, VBE Utilization Schedule, and any Good Faith Efforts Documentation to Support Waiver Request of VBE Participation Goal) shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference.
2. Contractor SDB and VBE Participation Obligations.
 - a. The Contractor’s utilization of SDBs and VBEs towards meeting its SDB and VBE commitments will be calculated and credited as set forth in Section IV of the Instructions for Completing the SDB Participation Submittal and SDB Utilization Schedule, and in Section IV of the Instructions for Completing the VBE Participation Submittal and the VBE Utilization Schedule.

- b. For purposes of monitoring compliance with the Contractor's SDB participation commitments and VBE participation commitments, the contract cost is the dollar amount provided in the Contract. The Contractor's SDB and VBE participation percentages will also apply to Change Orders if the work that is the subject of the Change Order is the type of work being performed by an SDB or VBE on the Contract. The Agency reserves the right to require SDB or VBE participation on Change Orders for additional work not already subject to an SDB or VBE commitment as further described in the solicitation documents.
- c. The Contractor cannot alter its overall SDB or VBE commitments or commitments made to individual SDB or VBE subcontractors without written approval from the Issuing Office and the Department of General Services' Bureau of Diversity, Inclusion and Small Business Opportunities ("BDISBO").
- d. Both the overall percentage of SDB and VBE commitments, and individual SDB and VBE commitments must be maintained in the event the Contract is assigned to another prime contractor.

3. Subcontract Requirements.

- a. The Contractor and each SDB listed on the SDB Utilization Schedule or VBE listed on the VBE Utilization Schedule must enter into a final, definitive subcontract agreement signed by the Contractor and the SDB or VBE prior to the commencement of any work by the subcontractor.
- b. All subcontracts must contain:
 - i. The specific work, supplies or services the SDB or VBE will perform and the location for work performed; and
 - ii. The fixed dollar value that each SDB or VBE is to be paid; and
 - iii. Payment terms indicating that the SDB or VBE will be paid for work satisfactorily completed within fourteen (14) calendar days of the Contractor's receipt of payment from the Commonwealth for such work. Subcontractors are encouraged to utilize electronic payment methods; and
 - iv. Commercially reasonable terms for the applicable business/industry that are no less favorable than the terms of the Contractor's Contract with the Commonwealth and that do not place disproportionate risk on the SDB or VBE relative to the nature and level of the SDB's or VBE's participation in the Contract.
- c. If the subcontract terms omit any of the information required in subparagraph C.3.b but that information is otherwise reflected within the Contractor's SDB Participation

Submittal, VBE Participation Submittal, or associated documents (SDB Utilization Schedule, VBE Utilization Schedule, and Letters of Commitment), the information listed in the SDB Participation Submittal, VBE Participation Submittal, or associated documents is incorporated into the subcontract agreement. To the extent that any subcontract terms conflict with the requirements of paragraph (b) or information contained within the bidder's or selected offeror's SDB Participation Submittal or VBE Participation Submittal and associated documents, the order of precedence is as follows: 1) the requirements of paragraph (b), 2) the selected offeror's SDB Participation Submittal, VBE Participation Submittal and associated documents; and 3) the terms of the subcontract agreement.

4. Utilization Reports.

- a. The Contractor shall register as a user in the PRiSM Compliance Management System and shall submit Utilization Reports to BDISBO in accordance with the DGS instructions found at the following links:

<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Documents/Small%20Business%20Application%20Guide.pdf>); and
<https://www.dgs.pa.gov/Small%20Diverse%20Business%20Program/Documents/Submitting%20Utilization%20Payments.pdf>.

- b. Each Utilization Report must have current data (totals to date) identifying at least each element as follows:
- i. Detailed information, including but not limited to, any subcontracts and purchase orders documenting the dollar value commitments, commission, or fees to SDB and VBE firms to be used toward the satisfaction of the Project's goals. All SDBs and VBEs identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.
 - ii. Detailed information regarding any work that is claimed to be self-performed by the Contractor and therefore allegedly not eligible for subcontracting to an SDB and VBE.
 - iii. Regarding Construction Subcontracts and Purchase Orders:
 - a) All Subcontract/Purchase Orders awarded to date are \$ _____
 - b) Commitments to Small Diverse Businesses and Veteran Business Enterprises totals to date:
 - \$ _____ (dollars) for SDBs
 - % _____ (percentage) for SDBs
 - \$ _____ (dollars) for VBEs
 - % _____ (percentage) for VBEs

c) For each SDB and VBE subcontract and purchase order awarded since the previous Application for Payment, the:

- 1) Identification and status of the SDB as a minority business enterprise (MBE), woman business enterprise (WBE), LGBT business enterprise (LGBTBE), Disability-owned business enterprise (DOBE), Service-Disabled Veteran- Owned Small Business Enterprise (SDVBE) or the status of the VBE as a Veteran-Owned Small Business Enterprise (VBE) or a Service-Disabled Veteran- owned Small Business Enterprise (SDVBE) that will be performing the work; and
- 2) The type of work, service, or material to be performed/supplied; and
- 3) The amount paid to date on each SDB and VBE subcontract/purchase order this month; and
- 4) The designation of SDB and VBE stocking suppliers as either an MEP (i.e., mechanical, electrical, and plumbing) stocking suppliers or a General Construction stocking supplier; and
- 5) The fee or commission paid to the nonstocking supplier. No credit will be given if the fee or commission is not listed, and the maximum credit shall not exceed ten percent (10%) of the purchase order cost.
- 6) The Contractor shall submit to the Agency a copy of the Utilization Report with each Application for Payment. Failure to submit a Utilization Report with each Application for Payment will result in an incomplete Application for Payment and it being returned to the Contractor. An incomplete Application for Payment will not be processed.

5. Noncompliance with SDB and/or VBE Commitments.

- a. If after the first three months following Contract execution, the Contractor fails to progress in achieving its SDB and VBE participation commitments (based upon the data supplied in the Utilization Report), the Agency may withhold payments until the Contractor and the Agency discuss the reasons for lack of progress and achieve a resolution. The Contractor is not entitled to interest on any funds withheld due to its failure to submit a properly completed Utilization Report or its failure to progress in achieving its SDB and VBE participation commitments.
- b. Upon BDISBO notifying the Agency that the Contractor did not comply with the SDB commitments or VBE commitments, the Agency shall adhere to the Contract Documents for remedies and corrective actions required. The Contractor is required to initiate the corrective actions within ten (10) business days and complete them within the time specified by the Agency.

- c. The Contractor's compliance with requirements of the SDB/VBE participation component, including the fulfillment of any Small Diverse Business or Veteran Business Enterprise commitments in all subcontracts and purchase orders is material to the Contract between the Contractor and the Agency. Any failure to comply with these requirements constitutes a substantial breach of the Contract. It is further understood and agreed that in the event the Agency determines that the Contractor has failed to comply with these requirements, the Agency may, in addition to any other rights and remedies the Agency may have under the remedies as applicable on the Contractor. Remedies for breach of this component may include, but are not limited to, withholding of payments; termination of the Contract along with consequential damages; revocation of the prime contractor's SB, SDB, and/or VBE status; a determination that the Contractor's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth. The remedies enumerated herein are for the sole benefit of the Agency and the Agency's enforcement of any provision or the Agency's indulgence of any non-compliance with any provision hereunder shall not operate as a waiver of any of the Agency's rights in connection with the Contract, nor shall it give rise to actions by any third parties, including any Small Diverse Businesses or Veteran Business Enterprises.

D. Resources

1. DGS certification of an entity as an SDB or VBE means only that the applicant for certification has submitted information that qualifies it as an SDB or VBE in terms of its ownership and control. It does not imply, and no Bidder shall infer, that DGS or the Agency has in any way investigated or approved the entity's competence to perform work.
2. Questions regarding the SDB and VBE programs, including questions about the self-certification and verification processes can be directed to:

Department of General Services
Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO)
Room 611, North Office Building
Harrisburg, PA 17125
Phone: (717) 783-3119
Fax: (717) 787-7052
Email: RA-BDISBOVerification@pa.gov
Website: www.dgs.pa.gov