

Exhibit

**DESIGNATED SPECIAL PROVISION 7
(DSP7)**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS
for Federally-Funded Bureau of Office Service Projects**

Statement of Purpose

The purpose of this Special Provision is to carry out the U.S. Department of Transportation (DOT) policy of ensuring nondiscrimination in the award and administration of DOT-assisted Contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT-assisted Contracts. The Disadvantaged Business Enterprise (DBE) requirements of 49 C.F.R., Part 26, as amended (Part 26) apply to this contract. This exhibit shall be physically included in every subcontract.

The United States Department of Transportation issued an Interim Notice of Final Rulemaking (IFR) on October 3, 2025. Pursuant to 49 CFR § 26.111 under this IFR, PennDOT, as a member of the UCP, is reevaluating DBEs. This exhibit applies to all federally-funded contracts entered into by PennDOT, during the UCP's reevaluation period.

There are no DBE contract goals during the UCP's reevaluation process and until PennDOT has an approved DBE Program Plan, after the UCP's evaluation process.

Section I. Definitions

The following definitions apply for terms used in this Special Provision:

- A. Bid.** A Contractor's response to an RFQ that does not contain a technical review or an IFB.
- B. Bidder.** A Contractor who submits a Bid.
- C. Contract.** Any contract, purchase order, or both, between PennDOT and a Contractor that is paid in whole or part with DOT financial assistance.
- D. Contractor.** One who participates, through a contract or subcontract (at any tier), in a Contract for highway, transit, or airport programs.
- E. Days.** Calendar days. In computing any period of time described in this Special Provision, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or state holiday, the period extends to the next day that is not a Saturday, Sunday, or state holiday. Similarly, in circumstances where PennDOT's offices are closed for all or part of the last day, the period extends to the next day on which the PennDOT offices are open.
- F. DBE Neutral.** A program that is, or can be, used to assist all small businesses.

- G. Director.** The Director of the Bureau of Equal Opportunity.
- H. Disadvantaged Business Enterprise (DBE).** A for-profit small business concern:
1. that is an entity certified by the Pennsylvania Unified Certification Program as listed on www.paucp.com;
 2. that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
 3. whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- I. DOT.** The United States Department of Transportation, including, but not limited to, the Office of the Secretary, the Departmental Office of Civil Rights, the FHWA, the FTA and the FAA.
- J. FAA.** The United States Department of Transportation, Federal Aviation Administration.
- K. FHWA.** The United States Department of Transportation, Federal Highway Administration.
- L. FTA.** The United States Department of Transportation, Federal Transit Administration.
- M. Good Faith Effort.** Efforts to achieve DBE participation which, by their scope, intensity, and appropriateness of this objective can reasonably be expected to fulfill the program requirement.
- N. IFB.** Invitation for Bid.
- O. NAICS.** North American Industry Classification System.
- P. Offeror.** A Contractor who submitted a Proposal.
- Q. Part 26.** 49 C.F.R. Part 26.
- R. PennDOT.** The Commonwealth of Pennsylvania, Department of Transportation.
- S. Proposal.** A Contractor's response to an RFP or an RFQ with a technical evaluation.
- T. Publication 408.** PennDOT Publication 408 *Specifications* (current edition), together with its amendments and supplements.
- U. RFQ.** Request for Quote.
- V. RFP.** Request for Proposal.
- W. Small Business Enterprise (SBE).** A for-profit small business concern certified by PennDOT as listed on www.dotsbe.pa.gov that meets the ownership and control requirements of the SBE certification program and the personal net worth requirements of the SBE certification program.
- X. UCP.** Pennsylvania Unified Certification Program.

Section II. Required DBE Provisions

The Contractor, subcontractor, or subrecipient shall include the following provisions in every subcontract it enters into under this Contract (and require that its subcontractors also require inclusion of this provision in their subcontracts):

- A. Policy for Federally Funded Projects.** It is the policy of the DOT and PennDOT that DBEs, as defined in Part 26, and this Special Provision, be given the

opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this contract. Consequently, the DBE requirements of Part 26, as amended, apply to this contract.

B. Contractor Assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this or any DOT-assisted contract. The Contractor shall take all necessary and reasonable steps under Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform subcontracts. PennDOT's DBE program, as required by Part 26 and as approved by DOT, is incorporated by reference in this contract. Implementation of Part 26 is a legal obligation and failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or imposition of other available sanctions. Upon notification to the Contractor of its failure to carry out its approved program, the DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

C. Required DBE Assurance. The Contractor, sub recipient or subcontractor 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 Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor 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 PennDOT deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible.

D. Prompt Payment and Retainage. This Section applies to both DBE and non-DBE subcontractors and all lower-tiered subcontractors.

- 1. Prompt Payment.** Prime contractors are required to make prompt payment under 49 C.F.R. § 26.29. A certification of prompt payment will be required to certify that all subcontractors were paid from the previous month's payments. The prime contractor shall pay each subcontractor under the prime contract within seven Days of the prime contractor's receipt of payment from PennDOT for undisputed services provided by the subcontractor. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by PennDOT. When PennDOT has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Any delay or postponement of payment from a prime Contractor to a subcontractor may take place only for good cause, and with PennDOT's prior written approval.

2. **Retainage.** A prime Contractor shall not withhold retainage from a subcontractor.
 3. **Compliance with Prompt Payments and Retainage.** The Contractor shall and shall cause its subcontractors to submit any records and reports to PennDOT in order to comply with this Section or PennDOT's monitoring and oversight responsibilities to ensure compliance with prompt payment.
 4. **Failure to Comply.** If the Contractor fails to comply with this Section, PennDOT may assess sanctions for non-compliance, which include, but are not limited to, withholding funds, suspending the contract until compliance is obtained, terminating this agreement for Contractor default, damages, entering the Contractor in the Contractor Responsibility Program (CRP), and/or suspension and debarment proceedings in relation to the Contractor's prequalification status under 67 Pa. Code § 457.13, or more generally under 62 Pa.C.S. § 513.
 5. **EO-402 Monthly DBE/SBE Status Report.** Any Contractor making payments to subcontractors throughout the Contract term, must complete and submit the EO-402 Monthly DBE/SBE Status Report, monthly, regardless of whether any payments are made in the previous month and regardless of whether payments were made to DBEs or SBEs.
- E. Failure to Comply with DBE Requirements.** Failure to carry out the requirements of Part 26 constitutes a breach of contract and may result in termination of the contract, being barred from bidding on PennDOT contracts for up to three years, withholding progress payments, assessing sanctions, assessing liquidated damages, or any other remedy that PennDOT deems appropriate.

Section III. Small Business Enterprise (SBE) Participation.

There is no SBE goal. However, the Contractor shall recruit and utilize certified SBEs in addition to all other equal opportunity requirements of the Contract.

Section IV. DBE Obligation

There is no DBE goal during the reevaluation process described in 49 CFR § 26.111 and until PennDOT's DBE program plan is approved after the UCP's reevaluation process.

- A. **Contractor Use of DBEs.** As DBE firms are certified under the reevaluation process, the Contractor shall make an effort to identify and use DBEs. PennDOT will monitor payments to DBE and SBE subcontractors through the Contractor's submissions of payments as reflected in the EO-402.
- B. **Bidder's List.** PennDOT is required to obtain all bidders list information as required by 49 CFR § 26.11(c)(2) from (1) a Bidder who submitted a Bid, within

five Days of bid or (2) Offerors who submitted a Proposal, at the time the Proposal is submitted, which includes but is not limited to, the following:

- (i) Firm name;
- (ii) Firm address including ZIP code;
- (iii) Firm's status as a DBE or non-DBE;
- (iv) NAICS code applicable to each scope of work the firm sought to perform in its bid;
- (v) Age of the firm; and
- (vi) The annual gross receipts of the firm (this information may be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million; etc.)).

All Offerors and Bidders, as a requirement for their bid to be responsive shall complete and submit the EO-21 to PennDOT for all items in subsections (i)-(vi) above for all subcontractors (DBE and non-DBE) that the Bidder or Offeror intends to utilize on the project. The Offeror shall submit form EO-21 with its Proposal. The Bidder shall email form EO-21 to PennDOT at pabidderlist@pa.gov within five Days of Bid opening and shall reference the contract or procurement number in the subject line or body of the email.

Section V. ACTIONS TO BE TAKEN BY PENNDOT DURING PERFORMANCE OF THIS AGREEMENT

- A. Review of Performance.** To ensure that all contract obligations under this Exhibit are met, PennDOT will review the Contractors use of small businesses, DBEs, and will review the prime contractor's and subcontractor's compliance with subcontractor (at all tiers) prompt payment and retainage requirements in accordance with this Exhibit.
- B. Investigations.** PennDOT may conduct reviews or investigations of participants as necessary. All participants, including, but not limited to, DBEs, non-DBEs, and complainants using DBE Subcontractors, are required to cooperate fully and promptly with compliance reviews, investigations and other requests for information.
- C. Sanctions.** Upon completion of the work and during the performance of the work, PennDOT will review DBE participation for data collection purposes, only and will review Contractor compliance with applicable requirements of 49 CFR Part 26, which includes, but is not limited to, prompt payment, nondiscrimination, and required record-keeping and reporting obligations. Sanctions may be imposed for noncompliance; sanctions may include, but are not limited to, assessing sanctions, liquidated damages, default, suspension, debarment, termination of the Contract, or the Contractor being declared ineligible for future PennDOT contracts.

Section VI. RECORDS AND CONTINUING OBLIGATIONS OF THE CONTRACTOR

A. Reports and Records.

1. The Contractor shall make available upon request a copy of all subcontracts, regardless of whether the contract is with a DBE subcontractor. The Contractor shall ensure that all subcontracts require that the subcontractor and all lower tier subcontracts be performed in accordance with Part 26 and this Exhibit. All Contractors agree to provide PennDOT with the information it needs to fulfill PennDOT's requirement to know about all aspects of Part 26 on the Contract at all times.
2. The Contractor shall keep all project records as necessary to determine compliance with Part 26 and this Exhibit. At a minimum, the records shall reflect the following:
 - i. the number of disadvantaged and non-disadvantaged subcontractors, small businesses, Regular Dealers, Manufacturers, DBE Distributors, consultants, and service providers, and the type of work or services performed on or materials incorporated in this project, as applicable;
 - ii. documentation of the Contractor's general outreach and solicitation efforts to potential subcontractors, including DBEs and SBEs, for this project;
 - iii. records certifying that the amounts were actually paid to the DBE and SBE for work performed on the project; and
 - iv. cancelled checks shall be kept on file in the home office to reflect payment for the specific project and for inspection and audit by PennDOT.
3. The Contractor shall enter payment information on EO-402 and email it to PennDOTDBEGoal@pa.gov within five business days after the end of the month, which include the following:
 - i. the amount paid to each subcontractor (DBE and non-DBE) during the month and the amount paid to date. If no payments are made to a DBE or SBE during the month, the Contractor shall enter a zero (\$0.00) payment;
 - ii. paid invoices or a certification attesting to the actual amount paid to each firm, upon completion of the individual subcontractor's work; and
 - iii. in the event the actual amount paid to the DBE is less than the DBE commitment in the Contract, the Contractor shall provide a complete explanation of the difference.

- B. Maintenance of Records.** The Contractor shall maintain all records required under Part 26 and this Exhibit for a period of three years following acceptance of final payment from PennDOT, unless extended by statute, applicable record retention requirements in the Contract, or required to be retained as a result of litigation, claims, audits, or investigations. The Contractor shall make the records available for inspection by PennDOT and the DOT at any time during the term of

this Contract and for the three years following final payment from PennDOT, unless required to be kept longer as a result of a statute or Contract provision, or as a result of litigation, claims, audits, or investigations.