

## **SECTION 00 22 00A**

### **APPENDIX A**

#### **OWNER'S SUPPLEMENTARY INSTRUCTIONS TO BIDDERS - DBE/MINORITY**

##### CONSTRUCTION CONTRACTS GOAL FOR DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

Alabama A & M University is committed to providing equal opportunities for participation in all aspects of the Alabama A & M University construction program. Alabama A & M University prohibits discrimination against any person or business in the pursuit of these opportunities on the basis of race, color, gender, religion, handicap, or national origin, and will make every effort to conduct its contracting and purchasing program so as to prevent any discrimination. Alabama A & M University actively seeks to identify qualified minority, handicapped, and women-owned business enterprises so as to widen opportunities for participation as providers of goods and services, increases competition and ensure the proper and diligent use of public funds.

Alabama A & M University has adopted a goal for participation by disadvantaged business enterprises in construction projects based on the availability of DBE/MINORITY firms for the type of construction trade on that project and the percent of total contract value. The President and his staff shall establish appropriate guidelines and procedures.

#### OBJECTIVES/STATEMENTS

##### A. Definitions

- 1.) Bidder/Participant- Any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- 2.) Contract- A mutual binding legal document which defines a business relationship or any modification at the level of performance which obligates the seller to furnish supplies, equipment, materials, services, or knowledge in performing construction.
- 3.) Contractors- Any person, firm, partnership, corporation, association, or joint venture awarded a construction contract with Alabama A & M University or has contracted with the Owner to perform construction work or repair.
- 4.) Discrimination- To distinguish, differentiate, separate, or segregate solely on the basis of age, race, religion, color, sex, national origin, handicap, or veteran's status.
- 5.) Equipment- Includes materials, supplies, commodities, apparatus.
- 6.) Goal- An objective, expressed numerically to evaluate the type and amount of public contract awards and performance of disadvantage-owned business enterprises.
- 7.) Good Faith Effort- An activity performed by Bidders to assure the participation of DBE/MINORITY contracts covered under this plan.
- 8.) Joint Venture- A legal merger of two or more separately owned businesses/firms for

the purpose of submitting a single bid, to carry out a single business enterprise for profit, for which purpose they combine their property, capital, efforts, skills, or knowledge.

- 9.) Disadvantaged Business Enterprises (DBE/MINORITY)- A business enterprise owned and controlled at a minimum of 51% by one or more members of a group defined as a minority or women. A business certified as a DBE/MINORITY will show evidence of ownership and management interests and the daily business operations are real and continuing not created solely to meet the DBE/MINORITY requirements. Each firm will be certified by the Transportation Office on Alabama A&M University.
- 10.) Owner- Alabama A & M University
- 11.) Subcontractor- A firm under contract with the prime contractor for supplying materials or labor and materials and/or installation. The subcontractor may or may not provide materials in his subcontract. Work subcontracted in an emergency and which could not have been anticipated is excluded as a part of this program.
- 12.) Socially and economically disadvantaged individual- means the same as defined in 15 U.S.C 637. "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities". "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business are who are not socially disadvantaged".
- 13.) Verifiable Goal
  - a. For purpose of separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of DBE/MINORITY s for participation in contracts awarded;
  - b. For purpose of separate prime contract system, that the awarding authority had adopted written guidelines specifying the actions that the prime Contractor must take to ensure a good faith effort in the recruitment and selection of DBE/MINORITY s for participation in contract awarded; and
  - c. The required actions must be documented in writing by the prime contractors to the Owner.

B. Owner's Duties

1. Identification/Certification of Disadvantaged Business Enterprises (DBE/MINORITY).
  - a. The University shall affirmatively seek out and gain knowledge of minority and women owned business enterprises in the construction trades.
  - b. The University shall assist in certifying the eligibility of DBE/MINORITYs and joint venture involving DBE/MINORITY firms.
  - c. The University will maintain a list of firms certified as DBE/MINORITY.
  - d. The University will attend the scheduled pre-bid conference.
  - e. At least 7 days prior to the scheduled day of bid opening, notify DBE/MINORITYs that have requested notices from the University, of work being bid or the potential contracting opportunities listed in the proposal. The notification shall include the following:
    1. A description of the work for which the bid is being solicited.
    2. The date, time, and location where bids are to be submitted.
  3. The name of the individual within the owner's organization who will be available to answer questions about the project.

4. Where bid documents may be reviewed.
5. Any special requirements that may exist.
- f. Utilize other media; as appropriate, likely to inform potential DBE/MINORITYs of the bid being sought.
- g. Maintain documentation of any contracts, correspondence, or conversation with DBE/MINORITYs made in an attempt to meet the goals.
- h. Evaluate documentation to determine good faith effort has been achieved for DBE/MINORITY utilization prior to recommendation of award.
- i. Review prime contractors' pay applications for compliance with DBE/MINORITY utilization commitments prior to payment.

C. DBE/MINORITY SUBCONTRACT GOALS:

The goals for participation by DBE/MINORITY firms as subcontractors on this project is set for each project based on percentage of each construction trade in project and availability of DBE/MINORITY firms.

If bidder has not met the percent goal, the bidder must identify on its bid, the DBE/MINORITY s that will be utilized on the project with corresponding total dollar value of the bid. Affidavits A and C listing good faith efforts must be included with the bid.

If bidder has met the percent goal, the bidder must provide Affidavit B within 72 hours of the bid.

**The above information must be provided as required. Failure to submit these documents is grounds for rejection of the bid.**

D. Communications with DBE/MINORITY

The University shall provide information to DBE/MINORITY firms about the University's construction program. This shall be accomplished by:

1. Upon request, sending a notice to each DBE/MINORITY engaged in University construction that is advertised for bids;
2. Ensuring that prospective DBE/MINORITY bidders and subcontractors have access to bidding documents; and
3. Furnishing DBE/MINORITY subcontractors with the name of the prospective Bidders on a project; upon request, and providing Bidders with the University's list of known DBE/MINORITY firms,

E. Designer

The designer will:

1. Attend the scheduled pre-bid conference to assist in the explanation of DBE/MINORITY requirements to the prospective bidders.
2. Assist the owner to identify and notify prospective DBE/MINORITY prime and subcontractors of potential contracting opportunities.
3. Maintain documentation of any contracts, correspondence, or conversation with DBE/MINORITY firms made in an attempt to meet the goals.

4. Review jointly with the owner, all requirements of these guidelines – (i.e. bidders' proposals for identification of the DBE/MINORITY 's that will be utilized with corresponding total dollar value of the bid and affidavit listing Good Faith Efforts, or affidavit of self-performance of work, if the contractor will perform work under contract by its own workforce) – prior to recommendation of award.
5. Make documentation showing evidence of implementation of Designer's responsibilities available for review by Owner, upon request.

F. Anticipated Assurances from Contractors

1. Upon adoption of its verifiable goal, the University is expected to require Bidders on its projects to provide assurances in writing that they will make a good faith effort to solicit DBE/MINORITY s as subcontractors should they be awarded the construction contract. The successful Bidder shall provide the following information to the University and any other information requested in the attached forms:
  - a. The names and addresses of DBE/MINORITY s that will participate in the contract and the names of firms contacted that are not participating; (AFFIDAVIT C)
  - b. A description of the work each named DBE/MINORITY will perform; (AFFIDAVIT C)
  - c. The dollar amount of participation by each DBE/MINORITY (AFFIDAVIT C); and
  - d. Copies of any advertisements or correspondence the Bidder has used to attract DBE/MINORITY subcontractors.
2. A contractor's good faith effort to involve DBE/MINORITY firms in the project can be demonstrated by using, among other factors, the following:
  - a. Contacted DBE/MINORITY s that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State, local government, or University maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
  - b. Made the construction plans, specifications and requirements available for review by prospective DBE/MINORITY 's, or providing these documents to them at least 7 days before the bids are due.
  - c. Broken down or combined elements of work into economically feasible units to facilitate DBE/MINORITY participation.
  - d. Worked with minority trade, community, or contractor organizations identified by the University office of Transportation which provide assistance in recruitment of minority businesses.
  - e. Attended pre-bid meetings scheduled by the owner .
  - f. Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
  - g. Negotiated in good faith with interested DBE/MINORITY s and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a DBE/MINORITY based on lack of qualification should have the reasons documented in writing.
  - h. Provided assistance to an otherwise qualified DBE/MINORITY in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters in obtaining the same unit pricing with the bidder's suppliers in order to help DBE/MINORITY in establishing credit.
  - i. Negotiated joint venture and partnership arrangements with DBE/MINORITY in order to increase opportunities for DBE/MINORITY participation on a public construction or repair project when possible.
  - j. Provided quick pay agreements and policies to enable DBE/MINORITY contractors and suppliers to meet cash-flow demands.

G. DBE/MINORITY Responsibilities

- a. DBE/MINORITYs should make every effort to establish contacts and relationships with Contractors for potential future business, including attending pre-bid conferences and subscribing to industry and trade journals
- b. DBE/MINORITYs should also document all contacts and communications made with Contractors above so as to be able to assist the Grievance Designee in determining whether a complaint lodged by a DBE/MINORITY firm against a Bidder for failure to use good faith effort is valid.
- c. In addition, DBE/MINORITYs who are contacted by the Owner or Bidders should respond promptly whether or not they wish to submit a bid.
- d. DBE/MINORITYs are urged to take advantage of appropriate technical assistance and training when it is available.

H. Penalties for Contractor Noncompliance

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I. Criteria for Certification of Disadvantaged Business Enterprises

1. A Disadvantaged Business Enterprise (DBE/MINORITY) is a business, which is at least 51%, owned and controlled by minority group members or women. A DBE/MINORITY is bona fide only if the minority group or female ownership interests are real and continuing and not created solely to meet the DBE/MINORITY requirement. In addition, the DBE/MINORITY must itself perform satisfactory work or services or provide supplies under the contract and not act as a mere conduit.
2. The term "minority" means a person who is a citizen or lawful permanent resident of the United States and who are;
  - a. African-American, that is, a person having origins in any of the original racial groups in Africa.
  - b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South Central America, or the Caribbean Island, regardless of race.
  - c. Native-American, that is, persons having origins in any of the original peoples of North America.
  - d. Asian-American, that is, persons having origin in any of the countries of the Far East, Southeast Asia, or the Indian areas; or
  - e. Female.
  - f. Socially and economically disadvantaged individual-means the same as defined in 15 U.S.C. 637. "Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities." "Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area that are not socially disadvantaged".
3. The term "owned and controlled" means a business, which is a : 1) Sole proprietorship legitimately owned by a person who is a minority or female; 2) a partnership or joint venture controlled by minorities and/or women, and in which at least 51% of the beneficial ownership interests legitimately are held by minorities

and/or women; 3) a corporation or other entity controlled by minorities and/or females, and in which at least 51% of the voting stock or interested 51% of the beneficial ownership interest are legitimately held by minorities and/or females. In addition, these persons must control the management and operations of the business on a day to day basis.

4. The President shall appoint a DBE/MINORITY certification Review Committee to resolve any and all disputes concerning a business' eligibility for certification as a DBE/MINORITY. The Committee shall include at least one member from the Transportation Office, one member from the Purchasing Office, one member from the Facilities Office and the University Attorney.

J. Grievance Procedures.

1. The grievance shall first be discussed with the responsible operating department. If the grievance is not resolved, exercise item #2.
2. The grievance (complaint) must be reported in writing, a brief description and supporting documentation and evidence to the President's designee.
3. The President's designee will review the basis and the issue(s) of the complaint and may request additional supporting evidence. A response to the grievance will be completed within fifteen (15) working days unless circumstances mandate otherwise. Parties involved will be notified of any and all delays in processing the grievance.
4. Any participant not satisfied with the decision of the President's designee may avail himself/herself or any remedies available under the Federal, State and Local law.

To that end, DBE/MINORITY disputes arising under these guidelines should be resolved.