

APPENDIX F – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM (04/24)

It is TriMet's policy that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. TriMet views adherence to the Pre-Award Guidelines and Post-Award Requirements listed below as important mechanisms for meeting this policy objective. For a complete description of TriMet's DBE program, please refer to the latest detailed program document at: <http://trimet.org/dbe>.

I. DBE Program – Pre-Award Guidelines

- A. Offeror may obtain a list of certified DBE firms from the State of Oregon's Certification Office of Business Inclusion and Diversity (COBID) certification list by categories consistent with anticipated subcontracting opportunities.

<https://www.oregon.gov/biz/programs/COBID/Pages/default.aspx>
- B. Offeror should designate a qualified individual to manage all DBE matters on the project (DBE Coordinator).
- C. Offeror should solicit the interest of DBE firms for two consecutive weeks to allow firms time to respond to the solicitation. Offeror should solicit through all reasonable and available means, including mailing and faxing information on subcontracting opportunities to all or some firms on the state certified list and to all other interested DBEs, advertising in local, minority-owned newspapers, and attendance at pre-bid meetings.
- D. Offeror should provide interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- E. Offeror should document in writing outreach efforts. Offeror to document all of its effort to include DBE participation on this project in the DBE Good Faith Effort Documentation Form or provide the information in a similar format.
- F. Offeror should break out contract work items into economically feasible units and, where possible, identify rotation of work opportunities so that DBE participation from the Portland metropolitan area is included. Offeror is encouraged to utilize small contract packages as necessary to include DBE participation as described below.
- G. Offeror should not reject any DBE firm as unqualified without a thorough investigation of their capabilities.
- H. Offeror should make efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by the Proposer.
- I. Offeror should make efforts to assist interested DBE firms in obtaining the necessary equipment, supplies, materials, or related assistance or services needed for a competitive bid/proposal.

- J. Offerors should follow up with all competitive bids/proposals from DBE firms to clarify any questions that may arise. If DBE proposals are not utilized in the identified areas of work, Offerors should document in writing the reasons for this decision, and submit the documentation to TriMet's DBE and Workforce Equity Manager or designee.
- K. Offerors should use the services of all minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; the state DBE Directory; and other organizations and resources to provide assistance in the recruitment and placement of DBE firms.
- L. Offerors to complete and submit the Subcontractor Utilization Form showing all identifying DBE subcontractors, as well as additional MBE, WBE, VBE, ESB subcontractors expected to be utilized on this project, and the DBE utilization %.
- M. Offerors should provide a minimum of three (3) bids to substantiate the proposer's good faith effort (GFE) for each subcontracted area of work. Prime contractors need to call certified subs when they are reaching out and the person calling should be the Project Manager. Failure to comply with this requirement may result in a determination of being non-responsive to the solicitation requirements.
- N. Prior to contract execution or prior to execution of the construction services mod, Offeror shall fill out a DBE Regular Dealer/Distributor Affirmation Form (attached as Exhibit 1) for each DBE listed as a regular Dealer or Distributor. Offeror shall submit these forms to the designated Contracts Administrator for the Solicitation

II. DBE Program – Post-Award Requirements

- A. Contractor's DBE Coordinator shall schedule monthly project meetings with TriMet's DBE and Workforce Equity Manager or designee, or as otherwise required by TriMet. Contractor must maintain records of all subcontracts entered into with DBEs and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid to each DBE subcontractor or vendor. Records of DBE utilization shall be entered into TriMet's Diversity Compliance Reporting System, which is an on-line database manager more fully described in the Special Provisions of the solicitation.
- B. Contractor must also submit to TriMet's DBE and Workforce Equity Manager or designee an affidavit certifying that payment was made to the DBE subcontractor or supplier, to be signed by both the prime contractor and DBE sub. Such an affidavit must be submitted when final payment is made to a DBE sub, and when any retainage held is returned. A summary certification affidavit must be submitted at the completion of the project. TriMet reserves the right to require similar affidavits for interim progress payments in cases where payments to subcontractors are disputed.
- C. Contractor shall submit the Monthly Retainage report to TriMet's DBE and Workforce Equity Manager or designee, which is attached as Exhibit 2.
- D. The participation of a DBE subcontractor will not be considered part of the Contractor's DBE achievements until progress payments, as well as any retainage held by a Contractor, has been paid to the subcontractor.

- E. If any subcontractor is added or replaced after the bid is submitted or the contract is awarded, the selected Contractor shall make good faith efforts to solicit bids from DBE firms for the work to be performed.
- F. The Contractor must contact DBE firms in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work.
- G. The Contractor shall not add, delete, or replace any subcontractor without prior written consent of TriMet.

END OF APPENDIX F – DBE PROGRAM



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form EXHIBIT 1

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:	Total Subcontract/Purchase Order Amount: <input style="width: 90%; height: 20px;" type="text"/>
Authorized DBE Representative (Name and Title):	NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? YES NO
 (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)
- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?
 YES NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?
 YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)
- * If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?
 YES NO¹
- (If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)
- ¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility) ? YES² NO³
- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ? YES² NO³
- ² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.
- ³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

Monthly Retainage Report

Agency Name: TriMet	Federal Aid Number:
Prime Contractor Name:	Contract Number:
Contract Name:	Month/Year or Report:

Subcontractor Name	Start Date	Percent Complete	Monthly Amount of Retainage Withheld	Total Amount of Retainage Withheld	Retainage Released Date	Date Subcontractor's Work (physical and paper) Completed	Remarks

If you have additional subcontractors, which you are withholding retainage from, please complete additional forms. If you are not withholding retainage from any subcontractors, please list their name above and indicate "no retainage withheld" in the remarks column.

- Monthly Retainage Reports will be submitted next month. I certify that the above provided information is accurate.
- Yes, this is the Final Monthly Retainage Report Certification. I certify that the contracting records have been reviewed and all retainage withheld from subcontractors payments have been released.

 Prime Contractor Signature Title Date

Form Instructions

Subcontractor Name: Enter the name of each subcontractor performing work on the contract.

Start Date: Enter the date the subcontractor began work on the contract.

Percent Complete: Enter the percentage of contract work completed by the subcontractor as of the date of this form.

Monthly Amount of Retainage: Enter the dollar amount of retainage being withheld for the month being reported on this form.

Total Amount of Retainage: Enter the total dollar amount of retainage being withheld from the subcontractor since their work began.

Retainage Release Date: Enter the date the retainage has been released to the subcontractor. If not released during the month of reporting on this form, leave blank.

Date Subcontractor's Work (physical and paper) Completed: Enter the date all outstanding paperwork was received (affidavit of wages paid, certified payroll, etc.)

Remarks: Enter relevant comments.