

## SECTION I

### SMALL DIVERSE BUSINESS REQUIREMENTS

#### A. Overview

1. Upon Notice of Award, the successful bidder shall have the option of choosing to “Opt-in” or creating and maintaining documentation on its “Good Faith Effort” to meet the Project’s MPL. (See: subsection B(1) below). The Contractor will have the full duration of their contract to meet the MPL.
2. The Contractor’s commitments toward the MPL will be calculated and credited as follows:
  - i. **ONLY DGS-CERTIFIED SMALL DIVERSE BUSINESSES SHALL BE USED TO CALCULATE THE CONTRACTOR’S COMMITMENTS TO THE MPL.**
  - ii. A Contractor’s Small Diverse Business participation level is calculated by adding all dollar commitments to DGS-certified Small Diverse Business subcontractors of all tiers, DGS-certified Small Diverse Business manufacturers, and DGS certified Small Diverse Business suppliers and dividing that total amount by the total contract award price. Small Diverse Business dollar commitments will not be double counted (see Section 5(vii) below).
  - iii. Small Diverse Business subcontractors performing at least sixty percent (60%) of the subcontract with their own employees will be credited toward the MPL at 100 percent of the total dollar value of the subcontract/supply contract. Any Small Diverse Business subcontract, where the subcontractor performs less than 60% of the subcontract, will not be credited toward the MPL.
  - iv. Small Diverse Business stocking suppliers are credited at 60 percent of the total cost of the materials or supplies purchased. A stocking supplier is a regular dealer that owns, operates, or maintains a store, warehouse, or other establishment, in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  - v. Small Diverse Business nonstocking suppliers are credited at only the amount of the fee or commission charged by the Small Diverse Business nonstocking supplier for assistance in the procurement of the materials and supplies provided the fees or commissions are reasonable and not excessive as compared with fees customarily allowed for similar services and with the understanding that under no circumstances shall the credit, for a Small Diverse Business nonstocking supplier, exceed 10% of the purchase order cost. A nonstocking supplier does not carry inventory but orders materials from a manufacturer, manufacturer’s representative or a stocking supplier. In order for a nonstocking supplier to receive credit, it must perform a useful business function by engaging in meaningful work (i.e., negotiating price; AND determining quality and quantity; AND ordering materials; AND paying for the materials) and the fee or commission must be provided with the purchase order and the Small Diverse Business Utilization Report. Industry practices and other relevant factors will be considered.
  - vi. Small Diverse Business manufacturers are credited at 100 percent of the total cost of the materials or supplies purchased.

- vii. All Small Diverse Business participation shall include all tiers of design and/or construction.
  1. The Contractor is allowed to use contract amounts at any tier of supply or subcontracting provided that the Small Diverse Business is the initial Small Diverse Business firm in the organizational hierarchy. Therefore, if the Contractor or any of its non-Small Diverse Business Subcontractors or Suppliers makes a commitment to a Small Diverse Business, the credit for the subcontract/purchase order commitment, regardless of the level or tier, shall be calculated as indicated in Section 5 and credited toward the Contractor's Minimum Participation Level.
  2. The dollar value of any commitment to a Small Diverse Business cannot be double counted. In the event that the Small Diverse Business whose entire subcontract value is counted towards the Contractor's Participation Level then subcontracts a portion of the work or supplies associated with this subcontract to another Small Diverse Business, the dollar value of the subcontract with/to this lower tier Small Diverse Business is NOT counted in the Contractor's Participation Level in order to prevent the duplicate counting of Small Diverse Business commitment dollars. In this case, the dollar value of this subsequent Small Diverse Business subcontract has already been included within the scope of work and dollar value of the Small Diverse Business commitment already counted as a part of the Contractor's Participation Level.

#### **B. Upon Notice of Award.**

1. The successful bidder shall, upon Notice of Award and receipt of the Construction Contract, determine whether to choose "opt-in" or to provide "Good Faith Effort" documentation of its efforts to meet the MPL by initialing the appropriate selection in Article 9 of the Construction Contract. (See Form of Agreement DGS 1-C for further information.)
  - i. Opt-in – A successful bidder selecting "Opt-in" agrees to meet or exceed the Project's MPL by the time of the Close-out Inspection of the project.
  - ii. Good Faith Effort – A successful bidder selecting "Good Faith Effort" agrees to document its use of reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors, manufacturers, and suppliers greater than \$10,000 throughout the duration of the Project.
2. Article 9 of the Construction Contract lists both "Opt-in" and the "Good Faith Effort" options. The successful bidder shall select and initial the option of their choice. Failure to select an option will be deemed an incomplete Contract and PSU may consider this a failure to execute the Contract.

#### **C. Upon Contract Execution.**

1. If Opt-in was selected, the Contractor has until the time of Close-Out Inspection to meet or exceed the MPL for the Project. This will be tracked through the Small Diverse Business Utilization Report submitted with each Application for Payment.

2. If the Good Faith Effort was selected, the Contractor must create and maintain documentation of its reasonable efforts to identify, solicit, and secure commitments with Small Diverse Businesses on all subcontractors and suppliers greater than \$10,000 throughout the duration of the Project. At a minimum, such documentation shall include the following ("Good Faith Effort documentation"):
  - i. A certification that the contractor accessed the DGS web site database of DGS certified Small Diverse Businesses to identify DGS-certified Small Diverse Businesses for the subcontract or purchase order.
  - ii. A record of all companies solicited for the subcontract or purchase order that can perform the scope of work to be subcontracted or supply to be delivered, identifying any DGS-certified Small Diverse Businesses. If a subcontractor is not properly licensed or otherwise capable of performing the scope of work, they are not eligible to receive the subcontract. (A painting subcontractor, for example, may not be eligible to receive a subcontract to perform electrical work.)
  - iii. A record of all quotes received showing company name and address, contact person, telephone number, Small Diverse Business status, subcontractor, manufacturer, or supplier, scope of work to be performed or supply to be delivered, and the amount of the quote and identification of the selected subcontractor/manufacturer/supplier.
  - iv. A certification that the contractor negotiated fairly with responsive DGS-certified Small Diverse Businesses and, if commitments were not made, that such noncommitment related to the Small Diverse Business' capability or price. Upon notice from DGS, the Contractor will be required to submit, within ten (10) calendar days from the date such notice is received, the above Good Faith Effort documentation for review and compliance. Failure to submit such documents within the timeframe provided will result in a noncompliance entry into the Commonwealth's Contractor Responsibility Program and may be considered a substantial breach of the Contract, as determined by the Department.
  
3. Small Diverse Business Utilization Report
  - i. The Contractor, regardless of the option it selects, shall submit a Small Diverse Business Utilization Report with each Application for Payment. Each Small Diverse Business Utilization Report must have current data (totals to date) identifying at least each element as follows:
    1. Detailed information including but not limited to any subcontracts and purchase orders documenting the dollar value commitments, commission, or fees to Small Diverse Business firms to be used toward the satisfaction of the Project's MPL. All Small Diverse Businesses identified on the Utilization Report shall be retained on the Utilization Report throughout the duration of the Project.
    2. Detailed information regarding any work that is claimed to be self-performed by the Contractor and therefore allegedly not eligible for subcontracting to a Small Diverse Business.
    3. Construction Subcontracts and Purchase Orders:
      - a. All Subcontract/Purchase Orders awarded to date are \$ \_\_\_\_\_
      - b. Commitments to Small Diverse Businesses totals to date:
        - i. \$ \_\_\_\_\_ (dollars)
        - ii. % \_\_\_\_\_ (percentage)
      - c. For each Small Diverse Business subcontract and purchase order awarded since the previous Application for Payment the:

- i. Identity and status of the Small Diverse Business as a MBE/WBE/VBE/SDVBE that will be performing the work; and
- ii. The type of work, service, or material to be performed/supplied; and
- iii. The amount paid to date on each Small Diverse Business subcontract/purchase order this month; and
- iv. The designation of Small Diverse Business stocking suppliers as either a MEP (i.e., mechanical, electrical, and plumbing) stocking suppliers or a General Construction stocking supplier; and
- v. The fee or commission paid to the nonstocking supplier. No MPL credit will be given if the fee or commission is not listed and, the maximum credit shall not exceed 10 percent of the purchase order cost.

ii. Failure to submit a Small Diverse Business 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.

iii. Starting with either the first full month after the Initial Job Conference or the first Application for Payment (whichever is earlier), the Contractor must submit a Small Diverse Business Utilization Report. Thereafter, an updated Small Diverse Business Utilization Report shall be submitted with each Application for Payment.

**D. Resources.**

- 1. The Department is available for technical assistance to all Bidders submitting bids for this contract. Department certification of an entity as a Small Diverse Business means only that the applicant for certification has submitted information that qualifies it as an Small Diverse Business in terms of its ownership and control. It does not imply, and no Bidder shall infer, that the Department has in any way investigated or approved the entity's competence to perform work.
- 2. Contact the Bureau of Small Business Opportunities at (717) 783-3119.

Bureau of Small Business Opportunities  
611 North Office Building  
Harrisburg, Pennsylvania 17125