

*New Jersey Department of Transportation*  
1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



## *Baseline Document Change Announcement*

*Standard Specifications, State Disadvantaged Business Enterprise and State Women Business Enterprise (SDBE/SWBE) Utilization Attachment*

**BDC02S-13**

**August 6, 2002**

**SUBJECT: Release of state Disadvantaged Business Enterprise and State Women Business Enterprise Utilization Attachment for 100% State Funded Contracts**

The State Disadvantaged Business Enterprise and State Women Business Enterprise Utilization Attachment to the Special Provisions for wholly State funded contracts is issued for use on Department projects. When used, the SDBE/SWBE will replace the Disadvantaged Business Enterprise (DBE) Utilization Attachment for 100% State Funded Contracts.

As directed by the Office of Affirmative Action and Civil Rights, the State Disadvantaged Business Enterprise and State Women Business Enterprise Utilization Attachment is issued to be consistent with the new regulations and new language contained in N.J.A.C. 16:4.

The following revisions shall be incorporated in both the English unit Standard Input SI2001E1 and metric unit Standard Input SI2001M1:

**UNDER THE ATTACHMENTS LISTED FOR WHOLLY STATE-FUNDED PROJECTS, THE THIRD LISTED ATTACHMENT ENTITLED "DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION ATTACHMENT FOR 100 PERCENT STATE FUNDED CONTRACTS, PAGES 1 TO 6 INCLUSIVE, DATED OCTOBER 29, 1991, REVISED SEPTEMBER 1992" HAS BEEN REPLACED BY "STATE DISADVANTAGED BUSINESS ENTERPRISE AND STATE WOMEN BUSINESS ENTERPRISE UTILIZATION ATTACHMENT, 100% STATE FUNDED CONTRACTS, PAGES 1 TO 9 INCLUSIVE, DATED AUGUST 6, 2002".**

### **Instructions to Designers**

The above specification revision shall be included for all wholly State-Funded Department projects that have been designed using the English or Metric 2001 Standard Specifications and are to be advertised after August 12, 2002. The specification revision has been incorporated in the Standard Inputs SI2001E1 and SI2001M1 updated as of August 6, 2002.

Designers may access updated versions of the Standard Inputs SI2001E1 and SI2001M1 from the following New Jersey Department of Transportation Web Page:

<http://www.state.nj.us/transportation/cpm/StandardInputs/standardinputs.htm>.

**Distribution and Announcement Access Information**

This announcement is being distributed electronically to our in-house staff and various public agencies based on our Standard Specifications distribution list maintained by the Engineering Documents Unit.

Internet access to this BDC Announcement can be downloaded and viewed from the following New Jersey Department of Transportation Web Page:

<http://www.state.nj.us/transportation/cpm/BaselineDocuments/bdcdownloads.htm>.


Hard copies of this document can be acquired on a limited basis by contacting:

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Attachment: State Disadvantaged Business Enterprise and State Women Business Enterprise Utilization Attachment, 100% State-Funded Contracts and SDBE/SWBE Form A

STATE DISADVANTAGED BUSINESS ENTERPRISE AND STATE WOMEN BUSINESS  
ENTERPRISE UTILIZATION ATTACHMENT

100% STATE-FUNDED CONTRACTS

I. UTILIZATION OF STATE DISADVANTAGED BUSINESS ENTERPRISE (SDBE)  
AND STATE WOMEN BUSINESS ENTERPRISE (SWBE) BUSINESSES AS  
CONTRACTORS, MATERIAL SUPPLIERS AND EQUIPMENT LESSORS.

The New Jersey Department of Transportation advises each contractor or subcontractor that failure to carry out the requirements set forth in this attachment shall constitute a breach of contract and, after notification to the applicable State agency, may result in termination of the agreement or contract by the Department or such remedy as the Department deems appropriate. Requirements set forth in this section shall also be included in all subcontract agreements in accordance with State of New Jersey requirements.

II. POLICY

It is the policy of the New Jersey Department of Transportation that State Disadvantaged Business Enterprise/State Women Business Enterprise (SDBE/SWBE), as defined in N.J.A.C. 16:4 State Disadvantaged Business and State Women Business Participation on Department of Transportation Contracts, shall have the maximum opportunity to participate in the performance of contracts financed wholly with 100% state funds.

III. CONTRACTOR'S SDBE/SWBE OBLIGATION

The New Jersey Department of Transportation and its Contractor agree to ensure that SDBE/SWBE's, as defined in N.J.A.C. 16:4 have maximum opportunity to participate in the performance of contracts and subcontracts financed wholly with 100% state funds. In this regard, the New Jersey Department of Transportation and all Contractors shall take all necessary and reasonable steps to ensure that State Disadvantaged and State Women Businesses are utilized on, compete for, and perform on NJDOT construction contracts. The New Jersey Department of Transportation and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of State-funded contracts.

IV. COMPLIANCE

To signify and affirm compliance with the provisions of this attachment, the Bidder shall complete the Schedule of SDBE/SWBE Participation "Form A" included in the Proposal and all forms and documents required in Sections VII and VIII of these provisions which will be made a part of the resulting contract.

V. SDBE/SWBE TARGETS FOR THIS PROJECT

A. This project includes a target of awarding \_\_\_\_\_ percent of the total contract value to subcontractors qualifying as a STATE DISADVANTAGED BUSINESS and a target of awarding \_\_\_\_\_ percent of the total contract value to subcontractors that qualify as a STATE WOMAN BUSINESS, except as provided in VI, Parts C and D.

1. Only SDBE/SWBE's certified prior to the date of bid, or prospective State Disadvantaged/State Woman Business Enterprises that have submitted to the Division of Civil Rights/Affirmative Action on or before the day of bid, a completed "New Jersey Department of Transportation Certification Application" (Form PR-131) and all the required support documentation, will be considered in determining whether the contractor has met the established targets for the project. Early submission of required documentation is encouraged.
2. If a prospective SDBE/SWBE fails to meet the eligibility standards for participation the Department's State Disadvantaged/State Women Business Program, the Contractor shall, prior to the award, make reasonable outreach efforts to replace that ineligible subcontractor with a certified SDBE/SWBE whose participation is sufficient to meet the target for the contract.
3. Prospective SDBE/SWBE's whose certification applications are denied or rejected by the Division of Civil Rights/Affirmative Action are ineligible for participation on the project to meet SDBE/SWBE targets, regardless of any pending appeal action in progress.
4. A Directory of certified SDBE/SWBE's is available upon request to the Division of Civil Rights/Affirmative Action. The directory is to be used as a source of information only and does not relieve the Contractor of their responsibility to seek out SDBE/SWBE's not listed, prior to bid.

B. DEFINITIONS

1. "State Disadvantaged Business Enterprise" means a for-profit business that is certified by the Department as being a minority business as defined below or a business that is owned and controlled by individuals who the Department finds to be socially and economically disadvantaged on a case-by-case basis in accordance with the eligibility criteria at N.J.A.C.16:4-1.3.
2. "State Woman Business Enterprise" means a for-profit business that is certified by the Department as being a sole proprietorship, partnership, limited liability company, or corporation that is owned and controlled by women and meets all of the eligibility criteria of N.J.A.C. 16:4-1.3.

3. A "minority" means an individual who is:
  - (a) Black; which is a person having origins in any of the black racial groups of Africa, or;
  - (b) Hispanic; which is a person of Spanish culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race; or
  - (c) Asian American, which is a person having origins in any of the original peoples of the Far East, Southeast Asia, Indian Subcontinent, Hawaii or the Pacific Islands, regardless of race.
4. "Subcontractor" means a party that is engaged by a contractor to perform services in support of a transportation project.
5. "Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies, and other incidentals necessary or convenient to the successful completion by the Contractor of the construction described in the contract documents and the carrying out of all duties and obligations imposed by the contract documents on the Contractor.

#### VI. COUNTING SDBE/SWBE PARTICIPATION

- A. Each State Disadvantaged Business (SDBE) or State Woman Business Enterprise (SWBE) are subject to a certification procedure to ensure their SDBE/SWBE eligibility prior to the award of contract. In order to facilitate this process, it is advisable for the bidder to furnish the names of proposed SDBE/SWBE's to the Department before bid opening. Once a firm is determined to be a bona fide SDBE/SWBE by the Division of Civil Rights/Affirmative Action, the total dollar value of the contract awarded to the SDBE/SWBE is counted toward the applicable targets.
- B. The Contractor may count toward its SDBE/SWBE targets only expenditures to SDBE/SWBE's that perform a commercially useful function in the work of a contract. A SDBE/SWBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibility by actually performing, managing and supervising the work involved. To determine whether a SDBE/SWBE is performing a commercially useful function, the Contractor shall evaluate the amount of work subcontracted, industry practice and other relevant factors.
- C. If an SDBE/SWBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the SDBE/SWBE subcontracts a greater portion of the work of a contract than would be expected on the

basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

- D. If a Contractor is part of a Joint Venture and one or more of the Sole Proprietorships, Partnerships, Limited Liability companies or Corporations comprising the Joint Venture is a certified SDBE/SWBE, the actual payments made to the Joint Venture for work performed by the SDBE/SWBE member, will be applied toward the target. Payments made to the Joint Venture for work performed by a non-minority firm will not be applied toward the applicable target.
- E. If the Contractor is a certified SDBE/SWBE, payments made to the Contractor for work performed by the Contractor will be applied toward the SDBE/SWBE target. Payments made to the Contractor for work performed by non-SDBE/SWBE's will not be applied toward the goal.
- F. The Contractor may count 60 percent of its expenditures to SDBE/SWBE suppliers that are not manufacturers, provided that the SDBE/SWBE supplier performs a commercially useful function in the supply process. The contractor may count 100% of its expenditures to SDBE/SWBE suppliers who are also manufacturers. Manufacturers receive 100% credit toward the SDBE/SWBE target.
- G. When a SDBE/SWBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards the SDBE/SWBE goals only if the SDBE/SWBE's subcontractor is also a SDBE/SWBE. Work that a SDBE/SWBE subcontracts to a non-SDBE/SWBE firm does not count toward the assigned targets.

## VII. SUBMISSION OF CONTRACTOR'S AFFIRMATIVE ACTION PLANS

- A. Contractors are required to submit annually on their due date, their firm's Affirmative Action Program to the Division of Civil Rights/Affirmative Action. Contractors must have an approved Affirmative Action Program in the Division of Civil Rights/Affirmative Action no later than seven (7) State business days after receipt of bids. No recommendations to award will be made without an approved Affirmative Action Program on file in the Division of Civil Rights/Affirmative Action.
- B. The Annual Affirmative Action Program will include, but is not limited to the following:
  - 1. The name of the company's Liaison Officer who will administer the State Disadvantaged/State Women Business Program.
  - 2. An explanation of the affirmative action methods used in seeking out and considering State Disadvantaged/State Women Businesses as subcontractors, material suppliers or equipment lessors.

3. An explanation of affirmative action methods which will be used in seeking out future State Disadvantaged/State Women Businesses as subcontractors, material suppliers or equipment lessors after the award of the contract and for the duration of said project.
- C. The following shall be submitted either with the bid or to the Division of Civil Rights/Affirmative Action no later than seven (7) state business days after the receipt of bids.
1. SDBE/SWBE "FORM A" - Schedule of SDBE/SWBE Participation. The Contractor shall list all SDBE/SWBE's that will participate in the contract including scope of work, actual dollar amount and percent of total contract to be performed. This form should be submitted only if the target levels established for the contract have been met or exceeded;  
  
Note: If a change occurs to the Contractor's original Form A submission which was previously approved by the Division of Civil Rights/Affirmative Action, a Revised Form A must be submitted naming the replacement State Disadvantaged/State Woman subcontractors. A written explanation should be included with the submission of the revised Form A.
  2. Request for Exemption - In the event the Contractor is unable to meet the specified target levels, that Contractor must submit a written request for a partial or full exemption from the SDBE/SWBE targets. This request shall include the names of all SDBE/SWBE firms that the contractor will utilize on the contract and shall describe the specific work to be performed by each SDBE/SWBE together with the actual dollar amount of that work. Additionally, this request must address the Contractor's efforts to make reasonable outreach efforts as enumerated in Section VIII.
  3. SDBE/SWBE "FORM B" - Affidavit of State Disadvantaged/State Women Business Enterprise. Each proposed SDBE/SWBE not listed in the NJDOT Directory must submit "Form B" attesting to its validity as an SDBE or SWBE. (All firms must be certified by the Department prior to award of the contract)
  4. Additional Information - The Department in its sole discretion may request additional information from the Contractor prior to award of the contract in order to evaluate the Contractor's compliance with the SDBE/SWBE requirements of the bid proposal. Such information must be provided within the time limits established by the department. The Contractor shall, prior to the award of the contract, submit a completed SDBE/SWBE "Form A", even if it has been granted an exemption from the SDBE/SWBE targets.

VIII. REASONABLE OUTREACH EFFORTS

If a Contractor fails to meet the target levels for state disadvantaged and state women business participation, the Contractor shall document its reasonable outreach efforts to meet the SDBE/SWBE targets. Reasonable outreach shall include, but not be limited to the following:

- A. Attendance at a pre-bid meeting, if any, scheduled by the Department to inform SDBE/SWBE's of subcontracting opportunities under a given solicitation.
- B. Advertisement in general circulation media, trade association publications, and minority focus media for at least 20 days before bids are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.
- C. Written notification to SDBE/SWBE's that their interest in the contract is solicited;
- D. Efforts made to select portions of the work proposed to be performed by SDBE/SWBE's in order to increase the likelihood of achieving the stated targets;
- E. Efforts made to negotiate with SDBE/SWBE's for specific sub-bids including at a minimum:
  1. The names, addresses and telephone numbers of SDBE/SWBE's that were contacted;
  2. A description of the information provided to SDBE/SWBE's regarding the plans and specifications for portions of the work to be performed; and
  3. A statement of why additional agreements with SDBE/SWBE's were not reached;
- F. Information regarding each SDBE/SWBE the Bidder contacted and rejected as unqualified and the reasons for the bidder's conclusion;
- G. Efforts made to assist the SDBE/SWBE in obtaining bonding or insurance required by the Bidder or the Department.

IX. ADMINISTRATIVE RECONSIDERATION

- A. If the Division of Civil Rights/Affirmative Action determines that the apparent successful bidder/offeror has failed to make reasonable outreach efforts to meet the requirements of this section, the Department must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
- B. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the target



or made adequate good faith efforts to do so. NJDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the SDBE/SWBE targets or make an adequate good faith effort to do so.

- C. Within seven (7) State business days of being informed by the Division of Civil Rights/Affirmative Action that it is not a responsible bidder because it has not made or documented sufficient outreach efforts to SDBE/SWBEs, a bidder/offeror may make a request in writing to the following reconsideration official: John V. Naiman, Director, Division of Procurement, PO Box 600, Trenton, New Jersey, 08625-0600; Telephone (609) 530-6354; E-Mail: JohnNaiman@dot.state.nj.us. The Director, Division of Procurement, does not participate in the initial determination of whether reasonable outreach was performed by the Contractor.

X. RESPONSIBILITY AFTER AWARD OF THE CONTRACT

If at any time following the award of contract, the Contractor intends to sublet any portion(s) of the work under said contract, or intends to purchase material or lease equipment not contemplated during preparation of bids, said Contractor shall take affirmative action:

1. To notify the Resident Engineer, in writing, of the type and approximate value of the work which the Contractor intends to accomplish by such subcontract, purchase order or lease.
2. To signify and affirm compliance with the provisions of this Section, the Contractor shall submit the Post-Award Minority Business Enterprise/Women Business Enterprise Certification Form to the Regional Supervising Engineer with his application to sublet or prior to purchasing material or leasing equipment. Post Award Minority Business Enterprise/Women Business Enterprise forms may be obtained from the Resident Engineer.
3. To give minority and women-owned firms equal consideration with non-minority firms in negotiation for any subcontracts, purchase orders or leases.

XI. CONSENT BY DEPARTMENT TO SUBLETTING

- A. The Department will not approve any subcontracts proposed by the Contractor unless and until said contractor has complied with the terms of this SDBE/SWBE Utilization attachment.
- B. The Contractor shall provide the Resident Engineer with a listing of firms, organizations or enterprises to be used as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as SDBE's and SWBE's.

- C. Notification of a subcontractor's termination shall be sent to the Department by the Contractor through the Resident Engineer. Said determination notice shall include the subcontractor's ethnicity and reason for termination.

XII. CONCILIATION

In cases of alleged discrimination regarding these and all equal employment opportunity provisions and guidelines, investigations and conciliation will be undertaken by the Division of Civil Rights/Affirmative Action, New Jersey Department of Transportation.

XIII. DOCUMENTATION

A. Records and Reports

The Contractor shall keep such records as are necessary to determine compliance with its SDBE/SWBE Utilization obligations. The records kept by the Contractor will be designed to indicate:

1. The names of state disadvantaged/state women subcontractors, equipment lessors and material suppliers contacted for work on this project.
2. The type of work to be done, materials to be utilized or services to be performed other than by the prime contractor on the project.
3. The actual dollar amount of work awarded to SDBE/SWBE's.
4. The progress and efforts being made in seeking out and utilizing SDBE/SWBE's. This would include solicitations, quotes and bids regarding project work items, supplies, leases, etc.
5. Documentation of all correspondence, contacts, telephone calls, etc., to obtain the services of SDBE/SWBE's on this project.

B. The Contractor shall submit reports, as required by the Department, on those contracts and other business transactions executed with SDBE/SWBE's in such form and manner as may be prescribed by the Department.

C. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by the Department.

XIV. PAYMENT TO SUBCONTRACTORS

The Contractor agrees to pay its subcontractors in accordance with Section 109 of the Standard Specifications, as amended.

XV. SANCTIONS

Failure of a Contractor to comply with these provisions may result in bid rejection, reduced classification, suspension, debarment, or the institution of other appropriate action by the New Jersey Department of Transportation.

Superseded

