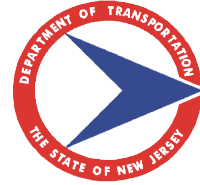


**New Jersey Department of Transportation**  
1035 Parkway Avenue, PO Box 600, Trenton, New Jersey 08625-0600



## ***Baseline Document Change Announcement***

**ANNOUNCEMENT: BDC18S-18**

**DATE: April 26, 2019**

**SUBJECT: FHWA and State Attachments**  
**- Revision to the 2007 Standard Inputs (SI2007), Federal Aid Project Attachments 1, 3 & 7 and the State Funded Project Attachments 1 & 5.**

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The FHWA Attachments 1, 3 & 7 and the State Attachments 1 & 5 have been revised (April 2019) in accordance with requirements of the Contract Compliance Unit of the Division of Civil Rights/Affirmative Action.

The revisions are as follows:

The FHWA Attachments 1 & 3 and the State Attachment 1 have been revised to ensure consistency between the DBE, ESBE, and SBE Special Provisions Attachments. Also, revisions have been made to ensure equal employment opportunity and prohibit discrimination against minorities and women. Further revisions have been made to clarify the types of records and reports that are necessary to determine said firm's compliance with their DBE/ESBE obligations on the contract per 49 CFR 26 and the firms SBE obligations per the SBE Program. Several other changes are made to be consistent with the Specifications format.

The FHWA Attachment 7 and the State Attachment 5 have been revised to add the language pertaining to the Diane B. Allen Equal Pay Act (N.J.S.A. 34:11-56.14b) from Subsection 101.01 of the *2007 Standard Specifications for Road and Bridge Construction*. Also, language stating where to report the required information has been added.

The revised Federal Aid Project Attachments 1, 3 & 7 and the State Funded Project Attachments 1 & 5 are attached.

The following BDC Announcement is hereby superseded:

BDC18S-16, released December 24, 2018, entitled "Diane B. Allen Equal Pay Act."

**Implementation Code R (ROUTINE)**

Changes must be implemented in all applicable Department projects scheduled for Final Design Submission at least one month after the date of the BDC announcement. This will allow designers to make necessary plan, specifications, and estimate/proposal changes without requiring the need for an addenda or postponement of advertisement or receipt of bids.

**Recommended By:**



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Paul F. Schneider  
Director  
Capital Program Support

**Approved By:**



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Snehal Patel, P.E., PMP  
Assistant Commissioner  
Capital Program Management  
and State Transportation Engineer

PS: NP: HP  
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## FEDERAL AID PROJECT ATTACHMENT 1

### DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

- A. Utilization of Disadvantaged Business Enterprises as Subcontractors, Transaction Expeditors, Regular Dealers, Manufacturers and Truckers.** The Department advises the Contractor and subcontractors that failure to carry out the requirements in this attachment constitutes a material breach of Contract and, after the notification of the applicable Federal 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 physically included in all subcontracts in accordance with USDOT requirements.
- B. Policy.** It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26; Titles I & V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA); MAP-21, Moving Ahead for Progress in the 21st Century Act (P.L. 112-141); FAST-ACT, Fixing America's Surface Transportation Act (P.L. 114-94, December 4, 2015); and Section III below, shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. The Disadvantaged Business Enterprise requirements of 49 CFR, Part 26 et seq. apply to this agreement.
- C. Definitions**
- 1. Disadvantaged Business Enterprise (DBE).** A for-profit small business concern:
    - a. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
    - b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it, and who do not exceed the personal net worth criteria established in 49 CFR Part 26.
  - 2. Socially and economically disadvantaged individual.** Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
    - a. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group;
    - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
      - (1) Black Americans," which includes persons having origins in any of the Black racial groups of Africa
      - (2) Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race
      - (3) Native Americans," which includes persons who are enrolled members of a Federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians
      - (4) Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong
      - (5) Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka
      - (6) Women

- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
  - (8) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
3. **Commercially Useful Function (CUF).** A DBE performs 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 perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for preparing the estimate, negotiating price, determining quality and quantity, ordering the material, arranging delivery, installing (where applicable), and paying for the material and supplies itself for the project.
  4. **Transaction expeditor (broker).** A DBE who arranges or expedites transactions and who arranges for material drop shipments.
  5. **DBE regular dealers.** A firm that must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment required under this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  6. **DBE manufacturer.** A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for the Contract.
  7. **Good faith effort (GFE).** Efforts to achieve a DBE goal or other requirement of 49 CFR Part 26, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Efforts to include firms not certified as DBEs in the state where the contract is being let are consequently not good faith efforts to meet a DBE contract goal.
  8. **Affirmative Action Plan.** An outline of the steps a contractor or subcontractor will implement to achieve equal employment opportunity and affirmative action and/or to correct its equal employment and affirmative action program deficiencies.
- D. Compliance.** The Contractor is responsible for compliance as specified in Section 105.
- E. Contractor's DBE Obligations.** Ensure that DBEs have an equal opportunity to receive and participate in contracts and subcontracts financed in whole or in part with Federal funds in performing work with the Department. Take all necessary and reasonable steps in accordance with 49 CFR, Part 26 and the Contract to ensure that DBEs are given equal opportunity to compete for and to perform on the Department's Federal Aid Projects. Do not discriminate in the award and performance of any Contract obligation including, but not limited to, performance of obligations on USDOT assisted contracts, as specified in Section 107.
1. Post Award Obligations
    - a. Give DBEs equal consideration with non-minority firms in negotiation for any subcontracts, purchase orders or leases.
    - b. Attempt to obtain qualified DBEs to perform the work. A directory of certified Disadvantaged Small Businesses Enterprise firms can be found in the New Jersey Unified Certification Program Vendor Certification database, online at: <https://njucp.dbesystem.com/>.
  2. Affirmative Action After Award of the Contract
    - a. **Subletting.** If at any time following the award of the 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, take affirmative action:
      - (1) Notify the RE, 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) Submit the Post-Award Minority Certification (Part IV of the DC-18A Request for Approval to Sublet on Projects Utilizing the 2007 Specifications Form) to the Regional Supervising Engineer with the application to sublet, or prior to purchasing material or leasing equipment. Obtain Post Award Minority Certifications from the RE.
      - (3) Efforts made to identify and retain a DBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with

the original DBE prove unsuccessful, shall be as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.

- (4) Notification of a DBE firm's termination will be as specified in Section 108. Send notice in writing to the Department through the RE, with a copy to DCR/AA. Said termination notice will include the firm's ethnic classification, whether the firm is a DBE and the detailed reason(s) for termination.
- b. Selection and Retention of Subcontractors.** Do not discriminate in the selection and retention of subcontractors, including procurement of materials and leases of equipment as specified in 108.01. Provide the RE with a listing of firms, organizations or enterprises solicited and those utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as DBEs. Provide the RE with subcontract agreements for all subcontractors performing work on the Contract as specified in Section 108.
- (1) Efforts made to identify and retain a DBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with the original DBE prove unsuccessful, shall be submitted as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
  - (2) Notification of a DBE firm's termination will be as specified in Subsection 108.01. Send notice in writing to the Department through the RE. Said termination notice will include the firm's ethnic classification, whether the subcontractor is a DBE and the detailed reason(s) for termination.
- c. Meeting Contract DBE Goal.** Report attainment toward meeting the Contract DBE goal by submitting monthly, all DBE participation, to the Department's RE and DCR/AA Contract Compliance Unit using the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form. The form is due by the 5<sup>th</sup> of the month, and must list all DBEs used on the Contract to meet the Contract goal, the specific Contract work items each DBE is performing, whether the DBE is performing full or partial work on the items, and the amount paid to each DBE each month. Failure to report the information, and accurately report it may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the Contract as specified in Section 108.
- d. Termination, Substitution or Replacement of DBEs.** Make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on the Contract with another certified DBE, to the extent needed to meet the Contract DBE goal. Notify the DCR/AA immediately of the DBE's inability or unwillingness to perform and provide reasonable documented evidence. Prior to termination, substitution or replacement of a DBE subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker, submit a Revised CR-266 – Schedule of DBE/ESBE/SBE Participation form to the Department naming the replacement DBE firm(s), type of work performed, specific Contract work items, whether the DBE is performing full or partial work on the items, dollar value and percent of total Contract for each DBE firm. Submit detailed written explanation of why each change is being made, including documented evidence of good faith effort(s) with the submission of the revised Form CR-266. Submit along with the revised CR-266: 1) a completed Confirmation of DBE Firm (Form CR-273) to demonstrate direct written confirmation from each DBE firm participating on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and if applicable; 2) a completed DBE Regular Dealer/Supplier Verification (Form CR-272) for all DBE Regular Dealers/Suppliers listed on the revised CR-266; and if applicable, 3) a completed DBE Trucking Verification (Form CR-274) for all DBE truckers listed on the revised CR-266 form. The Contractor is not permitted to complete any portion of the CR-273, CR-272 or CR-274 forms. Termination, substitution or replacement of DBEs shall be made as specified in Section 108. Termination or replacement of DBEs cannot be made without prior written approval of the Department as per 108.01.
- e. Submission of Good Faith Effort Documentation.** If the Contractor is unable to meet the Contract goal for DBE participation, submit to the DCR/AA for review and approval, documented evidence of good faith efforts along with the monthly CR-267 form. This submission must include written details addressing each of the good faith efforts outlined in the Contract. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Contractor is meeting the Contract DBE goal or made adequate good faith efforts to do so.

- F. DBE Goals for the Contract.** This Contract includes a goal of awarding \_\_\_\_\_ percentage of the Total Contract Price to subcontractors, transaction expeditors, regular dealers, manufacturers and truckers qualifying as DBEs.

The Department's DCR/AA has sole authority to determine whether the Contractor met the goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract DBE goal or made adequate good faith efforts to do so, the Department will follow Section 105.

**G. Counting DBE Participation.**

1. Each DBE is subject to a certification procedure to ensure its DBE eligibility status prior to the award of the Contract. All DBEs working on the Contract must be certified DBEs. To receive DBE credit toward meeting a contract goal in the context of the contract award process, a DBE firm must be certified before the due date for bids or offers on the Contract, as stated in 49 CFR Part 26.81(c). There may be situations after the award of the Contract, however, in which it is appropriate to count DBE credit for the use of a DBE subcontractor certified after the contract is executed. To be eligible to obtain DBE credit, a DBE subcontractor must be certified before the subcontract on which it is working is executed.
2. The Department determines the percentage of DBE participation that will be counted toward the Contract DBE goal in accordance with 49 C.F.R. Part 26.55 et seq.
3. The Contractor will count DBE participation toward the Contract DBE goal only the value of the work actually performed by a certified DBE and only if the DBE performs a commercially useful function in the work of a contract as per 49 CFR, Subpart C, Part 26.55(c) and the Contract.
4. The Department will count DBE participation for DBE trucking firms in accordance with 49 C.F.R. Part 26.55 et seq. The DBE can count the entire value of services performed by DBE trucks. The DBE can count the value of non-DBE trucking services up to the value of services performed by DBE trucks used on the Contract. DBE participation can be counted for the value of services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease arrangement.
5. The Department will count DBE participation for DBE regular dealers, manufacturers and transaction expeditors in accordance with 49 C.F.R Part 26.55 et seq. Transaction expeditors/brokers will not receive DBE credit for any portion of the cost of the materials and supplies themselves toward the Contract DBE goal. For brokers, only the DBE's fee or commission, and no part of the cost of the goods, count towards DBE goals. The Department will determine if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. If a certified firm acts as a "regular dealer" in a given transaction, it is awarded DBE credit equivalent to 60 percent of the value of the items it supplies on that contract. This credit is awarded in recognition of the value the DBE adds to transaction and the risks that it takes.
6. If the Contractor is a certified DBE, payments made to the Contractor for work that the Contractor is certified to perform, and performed by the Contractor will be applied toward the Contract DBE goal. Payments made to the Contractor for work performed by non-DBEs will not be applied toward the Contract DBE goal.
7. When a DBE subcontractor sublets part of the work of its contract to another firm, the value of the subcontract work may be counted towards the Contract DBE goal only if the subcontractor itself is a certified DBE. Work that a DBE subcontractor subcontracts to a non-DBE firm, cannot be counted towards the Contract DBE goal.

**H. Commercially Useful Function**

1. **Performance of Work.** The DBE must perform the work with their own permanent employees, or employees recruited through traditional recruitment and/or employment centers. DBEs must employ and control their own workforce, and cannot share employees with the Contractor, other subcontractors on the present project, or the renter-lessor of equipment being used on the present project. The DBE firm must be responsible for all payroll and labor compliance requirements for all of their employees performing work on the Contract. Direct or indirect payments by any other contractor are not allowed.
2. **Managing Work.** The DBE must manage the work themselves including the scheduling of work operations, ordering of equipment and materials, hiring/firing of employees, including supervisory employees, and preparing and submitting certified payrolls. The DBE must supervise their portion of daily work operations of the project. With respect to materials and supplies used on the Contract, the DBE must be responsible for preparing the estimate, negotiating price, determining quantity and quality, ordering the material, arranging delivery; installing, (where applicable), and paying for the material and supplies itself, for the project.

3. **Responsibility of Work.** A DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce. The DBE must not subcontract 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.
4. **Equipment of DBE.** The DBE must perform the work stated in the subcontract with their own equipment, whether owned or leased and operated on a long term agreement, not an ad hoc or contract by contract agreement. The equipment must be owned by the DBE firm, or leased/rented from traditional equipment lease/rental sources. The equipment will not belong to the Contractor, any other subcontractor or lower tier subcontractors on the current project, or supplier of materials being installed by the DBE firm.
5. **Lease of Equipment.** A DBE firm may lease specialized equipment from a contractor, but not from the Contractor, if it is consistent with normal industry practices and at rates competitive for the area. Rental agreements must be for short periods of time, specify the terms of the agreement and involve specialty equipment to be used at the job site. The lease may allow the operator to remain on the lessor's payroll, if it is the generally accepted industry practice but the operation of the equipment must be subject to full control by the DBE. The DBE is expected to provide the operator for non-specialized equipment, and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required.
6. **DBE Trucking.** DBE trucking companies must perform a commercially useful function in accordance with 49 CFR Part 26.55 et seq. Contrived arrangements for the purpose of meeting DBE goals will not be allowed. The DBE must be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis, and must own and operate at least one fully, licensed, insured and operational truck used on the Contract.

The DBE trucking firm is not permitted to obtain trucks from the Contractor to perform work on the project. The DBE may lease trucks from a subcontractor working on the project, provided the trucks are obtained from the subcontractor prior to the project letting. The DBE may lease trucks from another DBE, including an owner-operator that is certified as a DBE. The DBE may also lease trucks from non-DBEs and owner-operators. Bona fide lease agreements must be for the length of time needed by the DBE on the Contract and signed by both the DBE and the firm(s), either certified DBE or non-DBE, from which the trucks will be leased. Leases must indicate that the DBE has exclusive use and control over the truck. As per 49 CFR Part 26.55(d)(7), all leased trucks, including non-DBE trucks, must display the name and USDOT identification number issued for interstate commerce, of the DBE firm on the outside of the truck. DBE firms are expected to use the same trucks for DBE credit on all projects so use of leased vehicles on a project-by-project basis is not permitted.

The Contractor shall have signed Hiring Agreements. Submit copies of these signed Hiring Agreements, and copies of all signed lease agreements to the RE prior to the trucking firm's commencing work on the project. Prior to the DBE trucking firm beginning work on the Contract, DBE Trucking firms will be required to complete the DBE Trucking Verification (Form CR-274). The DBE and Contractor must sign the form and the Contractor submit the original CR-274 form directly to the Department's RE, with a copy submitted to the DCR/AA. The Contractor is not permitted to complete any portion of the CR-274 form. The Contractor must prepare, sign and submit with the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form, a Monthly Trucking Verification form (CR-271), identifying each truck owner, DBE Certification number, company name and address, truck number, and commission or amount paid for all DBE and non-DBE truckers performing work on the project. Also, submit the form to the Department as per Section E of this Special Provision for DCR/AA review, approval and determination of credit toward the Contract goal. Failure to submit the forms may result in denial or limit of credit toward the Contract DBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions or termination of the Contract as specified in Section 108.

7. **DBE Regular Dealers.** DBE regular dealers must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain 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 this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

When the Contractor seeks credit toward the Contract DBE goal using DBE regular dealers, the DBE Regular Dealer/Supplier Verification (Form CR-272) must be completed and signed by the DBE regular dealer and

then signed by the Contractor. Submit the form to the Department as per Section E of this Special Provision for the DCR/AA's review, approval and determination of credit toward the Contract DBE goal.

8. **DBE Manufacturers.** DBE manufacturers must be a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required for this Contract.
  9. The Contractor shall not use a DBE solely for the purpose of acting as an extra participant in a transaction, a contract or the Contract through which funds are passed in order to obtain the appearance of DBE participation.
- I. Good Faith Effort.** To demonstrate good faith efforts to meet the Contract DBE goal, a Contractor shall, on an ongoing basis, document the steps it takes to obtain DBE participation in accordance with 49 CFR Part 26.53 and Appendix A, including but not limited to the following:

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

Should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. Determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

2. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
3. Providing interested DBEs with detailed information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract. Attempt to contact all potential subcontractors on the same day and use similar methods to contact them;
4. Negotiating in good faith with interested DBEs. Make a portion of the work available to DBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

Consider a number of factors in negotiating with subcontractors, including DBE subcontractors. Take a firm's price and capabilities as well as Contract goals into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for failure to meet the contract DBE goal, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a Contract with its own organization does not relieve the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

5. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract DBE goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy the Contract DBE goal.

Inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the Contractor has the ability and/or



desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

Attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

Keep a record of efforts, including the names of businesses contacted and the means and results of such contacts.

6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

If the Contractor fails to meet the Contract DBE goal, they must submit documented evidence of good faith effort(s) with the CR-268 final DBE Report to the DCR/AA for review and approval. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Contractor met the Contract DBE goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract DBE goal or made adequate good faith effort to do so, the Department will follow Section 105.

#### **J. Submission of Affirmative Action Program**

Contractors, subcontractors and professional service firms performing work for the Department are required to submit their company's Affirmative Action Program annually to the DCR/AA. Contractors must have an **approved** Affirmative Action Program on file in the DCR/AA no later than seven (7) State business days after the date of bid opening. No recommendations to award will be made without an approved Affirmative Action Program on file in the DCR/AA. Ensure subcontractors and professional service firms have an approved Affirmative Action Plan on file in the DCR/AA prior to their beginning work on a particular project.

The Annual Affirmative Action Program will include, but is not limited to the following:

1. Copy of company's comprehensive EEO/Affirmative Action Plan, with a cover page that includes the company name and address, and signature of the Chief Executive or EEO Officer.
2. Copy of document designating the company's corporate EEO Officer, including the name, address and contact telephone number for the officer, and signature of the Chief Executive or President, on company letterhead.
3. Copy of the company's EEO Policy Statement on company letterhead, dated and signed by the Chief Executive and the EEO Officer.
4. Copy of the company's Sexual Harassment Policy on company letterhead.
5. EEO Legend such as letterhead, envelope, or published advertisement showing the company is an equal opportunity employer.
6. Copy of document designating the company's DBE Liaison Officer to administer the firm's Disadvantaged Business Program.
7. DBE Affirmative Action Plan which is an explanation of affirmative action methods intended to be used to seek out and consider DBEs as subcontractors, material suppliers or equipment lessors. This refers to the Contractor's ongoing responsibility, i.e., Disadvantaged Business Enterprise/Affirmative Action activities after the award of the Contract and for the duration of the Contract.

**K. DBE Liaison Officer.** Designate a DBE Liaison Officer who shall be responsible for the administration of your DBE program in accordance with the Contract, and ensuring that the Contractor complies with all provisions of 49 CFR Part 26.

**L. Consent by Department to Subletting.** The Department will not approve any subcontract proposed by the Contractor unless and until said Contractor has complied with the terms of the Contract.

- M. Conciliation.** Allegations of breach of any obligation contained in these DBE provisions and guidelines, will be investigated by the DCR/AA, the Federal Highway Administration and/or the USDOT.
- N. Documentation**
- 1. Requiring of Information.** The Department or the Federal funding agencies may at any time require information as specified in Section 107 and deemed necessary in the judgment of the Department to ascertain the compliance of any Bidder, Contractor or subcontractor with the terms of the Contract.
  - 2. Records and Reports.** The Contractor, subcontractors and other sub-recipients will keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprise Utilization obligations. These records kept will be designed to indicate:
    - a. The names of DBE contractors, subcontractors, transaction expeditors and material suppliers contacted for work on the Contract, including when and how contacted, and the specific Contract work items and other information provided to each.
    - b. Work, services and materials which are not performed or supplied by the Contractor.
    - c. The actual dollar value of work subcontracted and awarded to DBEs, including specific Contract work items and cost of each work item.
    - d. The progress being made and efforts taken in seeking out and utilizing DBEs to include: solicitations, specific Contract work items and the quotes and bids regarding those specific Contract work items, supplies, leases, or other contract items, etc.
    - e. Detailed written documentation of all correspondence, contacts, telephone calls, etc., including names and dates/times, to obtain the services of DBEs on the Contract.
    - f. Records of all DBEs and non-DBEs who have submitted quotes/bids to the Contractor on the Contract.
    - g. Monthly CR-267 – Monthly Report, Utilization of DBE/ESBE or SBE, and other reports required for submission to the Department, hiring agreements, subcontracts, lease agreements, equipment rental agreements, supply tickets, delivery slips, payment information, and other records documenting DBE utilization on the Contract.
    - h. Documentation outlining EEO workforce information for the Contract.
    - i. Documentation outlining EEO and Affirmative Action efforts made in the administration and performance of the Contract.
  - 3. Submission of Reports, Forms and Documentation.** Submit reports, forms and documentation, as required by the Department, on those contracts and other business transactions executed with DBEs in such form and manner as may be prescribed by the Department. Failure to submit the required forms, reports or other documentation as required may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the contract as specified in Section 108. Submission of falsified forms, reports or other required documentation may result in termination of the Contract as specified in Section 108, investigation by the Department’s Inspector General or U.S. DOT, or both, and prosecution by the State Attorney General’s Office or U.S. Department of Justice, or both.
  - 4. Maintaining Records.** All 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, or the Federal funding agencies.
- O. Prompt Payment to Subcontractors.** On Federal Aid Projects, payment to subcontractors, equipment lessors, suppliers and manufacturers is made in accordance with Section 109.
- P. Non-Compliance.** Failure by the Contractor to comply with the DBE program, rules and regulations of 49 CFR Part 26 in the administration of the Contract may result in denial or limit of credit toward the Contract DBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, debarment, or termination of the Contract as specified in Section 108. The Contractor may further be declared ineligible for future Department contracts.

## FEDERAL AID PROJECT ATTACHMENT 1

### EMERGING SMALL BUSINESS ENTERPRISE UTILIZATION

- A. Utilization of Emerging Small Business Enterprises as Subcontractors, Transaction Expeditors, Regular Dealers, Manufacturers and Truckers.** The Department advises the Contractor and subcontractors that failure to carry out the requirements in this attachment constitutes a material breach of Contract and, after the notification of the applicable Federal 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 physically included in all subcontracts in accordance with USDOT requirements.
- B. Policy.** It is the policy of the Department that Emerging Small Business Enterprises, as defined in Section III below, shall have an equal opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. In furtherance of this policy the Department has established an Emerging Small Business Enterprise Program. This program is designed to promote participation and shared economic opportunity by smaller firms who qualify as ESBEs in NJDOT contracts and is undertaken pursuant to the authority contained in 49 CFR Part 26 et seq.
- C. Definitions**
1. **Emerging Small Business Enterprise (ESBE).** A for-profit small business concern classified as a small business pursuant to the appropriate Small Business Administration regulations:
    - a. That is at least 51 percent owned by one or more individuals who are economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
    - b. Whose management and daily business operations are controlled by one or more of the economically disadvantaged individuals who own it, and who do not exceed the personal net worth criteria established in 49 CFR Part 26.

**NOTE: DBEs automatically qualify as ESBEs.**
  2. **Owned and Controlled.** Defined as: that at least 51% of the ownership interests as well as the management and daily business operations of the firm reside in individuals whose personal net worth does not exceed the requirements established in 49 CFR, Part 26.
  3. **Commercially Useful Function (CUF).** An ESBE performs 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 perform a commercially useful function, the ESBE must also be responsible, with respect to materials and supplies used on the contract, for preparing the estimate, negotiating price, determining quality and quantity, ordering the material, arranging delivery, installing, (where applicable), and paying for the material and supplies itself for the project.
  4. **Transaction expeditor (broker).** An ESBE who arranges or expedites transactions and who arranges for material drop shipments.
  5. **ESBE regular dealer.** A firm that must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment required under this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  6. **ESBE manufacturer.** A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for the Contract.
  7. **Good faith effort (GFE).** Efforts to achieve an ESBE goal or other requirement of the ESBE Program and of 49 CFR Part 26, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Efforts to include firms not certified as ESBEs in the state where the contract is being let are consequently not good faith efforts to meet an ESBE contract goal.
  8. **Affirmative Action Plan.** An outline of the steps a contractor or subcontractor will implement to achieve equal employment opportunity and affirmative action and/or to correct its equal employment and affirmative action program deficiencies.

- D Compliance.** The Contractor is responsible for compliance as specified in Section 105.
- E. Contractor ESBE Obligations.** Ensure that ESBEs have an equal opportunity to receive and participate in contracts and subcontracts financed in whole or in part with Federal funds in performing work with the Department. Take all necessary and reasonable steps in accordance with 49 CFR Part 26 and the Contract to ensure that ESBEs are given equal opportunity to compete for and perform on the Department's Federal Aid Projects. Do not discriminate in the award and performance of any Contract obligation including, but not limited to, performance of obligations on USDOT assisted contracts, as specified in Section 107.
1. Post Award Obligations
    - a. Give ESBEs equal consideration with minority firms in negotiation for any subcontracts, purchase orders or leases.
    - b. Attempt to obtain qualified ESBEs to perform the work. A directory of certified Emerging Small Business Enterprise firms may be found in the Emerging Small Business (ESBE) Program online directory at: <http://www.state.nj.us/transportation/business/civilrights/pdf/ESBEDirectory.pdf>.
  2. Affirmative Action after Award of the Contract
    - a. **Subletting.** If at any time following the award of the 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, take affirmative action:
      - (1) Notify the RE, 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) Submit the Post-Award Minority Certification (Part IV of the DC-18A Request for approval to Sublet on Projects Utilizing the 2007 Specifications Form) to the Regional Supervising Engineer with the application to sublet, or prior to purchasing material or leasing equipment. Obtain Post Award Minority Certifications from the RE.
      - (3) Efforts made to identify and retain an ESBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with the original ESBE prove unsuccessful, shall be followed as specified for DBE subcontractors as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
      - (4) Notification of an ESBE firm's termination will be as specified in Section 108. Send notice in writing to the Department through the RE, with a copy to DCR/AA. Said termination notice will include the firm's ethnic classification, whether the firm is an ESBE and the detailed reason(s) for termination.
    - b. **Selection and Retention of Subcontractors.** Do not discriminate in the selection and retention of subcontractors, including procurement of materials and leases of equipment as specified in 108.01. Provide the RE with a listing of firms, organizations or enterprises solicited and those utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as ESBEs. Provide the RE with subcontract agreements for all subcontractors performing work on the Contract as specified in Section 108.
      - (1) Efforts made to identify and retain an ESBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with the original ESBE prove unsuccessful, shall be submitted as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
      - (2) Notification of an ESBE firm's termination will be as specified in Subsection 108.01. Send notice in writing to the Department through the RE. Said termination notice will include the firm's ethnic classification, whether the firm is an ESBE and the detailed reason(s) for termination.
    - c. **Meeting Contract ESBE Goal.** Report attainment toward meeting the Contract ESBE goal by submitting monthly, all ESBE participation, to the Department's RE and DCR/AA Contract Compliance Unit using the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form. The form is due by the 5th of the month, and must list all ESBEs used on the Contract to meet the Contract goal, the specific Contract work items each ESBE is performing, whether the ESBE is performing full or partial work on

the items, and the amount paid to each ESBE each month. Failure to report the information, and accurately report it may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the Contract as specified in Section 108.

- d. **Termination, Substitution or Replacement of ESBEs.** Make good faith efforts to replace an ESBE that is terminated or has otherwise failed to complete its work on the Contract with another certified ESBE, to the extent needed to meet the Contract ESBE goal. Notify the DCR/AA immediately of the ESBEs inability or unwillingness to perform and provide reasonable documented evidence. Prior to termination, substitution or replacement of an ESBE subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker, submit a Revised CR-266 – Schedule of DBE/ESBE/SBE Participation form to the Department naming the replacement ESBE firm(s), type of work performed, specific Contract work items, whether the ESBE is performing full or partial work on the items, dollar value and percent of total Contract for each ESBE subcontractor. Submit detailed written explanation of why each change is being made, including documented evidence of good faith effort(s) with the submission of the revised Form CR-266. Submit along with the Revised CR-266: 1) a completed Confirmation of ESBE Firm (Form CR-273) to demonstrate direct written confirmation from each ESBE firm participating on the Contract, confirming the kind and amount of work that was provided on the Contractor’s CR-266, and if applicable; 2) a completed ESBE Regular Dealer/Supplier Verification (Form CR-272) for all ESBE Regular Dealers/Suppliers listed on the Revised CR-266 form, and if applicable; 3) a completed ESBE Trucking Verification (Form CR-274) for all ESBE truckers listed on the Revised CR-266 form. The Contractor is not permitted to complete any portion of the CR-273, CR-272 or CR-274 forms. Termination, substitution or replacement of ESBEs shall be made as specified in Section 108. Termination or replacement of ESBEs cannot be made without prior written approval of the Department as per 108.01.
- e. **Submission of Good Faith Documentation.** If the Contractor is unable to meet the Contract goal for ESBE participation, submit to the DCR/AA for review and approval, documented evidence of good faith efforts along with the monthly CR-267 form. This submission must include written details addressing each of the good faith efforts outlined in the Contract. Submittal of such information does not imply DCR/AA approval.

**F. ESBE Goals for This Contract.** This Contract includes a goal of awarding \_\_\_\_\_ percentage of the Total Contract Price to subcontractors, transaction expeditors, regular dealers, manufacturers and truckers qualifying as ESBEs.

The Department’s DCR/AA has sole authority to determine whether the Contractor met the goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract ESBE goal or made adequate good faith efforts to do so, the Department will follow Section 105.

**G. Counting ESBE Participation.**

1. Each ESBE is subject to a certification procedure to ensure its ESBE eligibility status prior to the award of the Contract. All ESBEs working on the Contract must be certified ESBEs. To receive ESBE credit toward meeting a contract goal in the context of the contract award process, an ESBE firm must be certified before the due date for bids or offers on the Contract. There may be situations after the award of the Contract, however, in which it is appropriate to count ESBE credit for the use of an ESBE subcontractor certified after the contract is executed. To be eligible to obtain ESBE credit, an ESBE subcontractor must be certified before the subcontract on which it is working is executed.
2. The Department determines the percentage of ESBE participation that will be counted toward the Contract ESBE goal in accordance with 49 C.F.R. Part 26.55 et seq.
3. The Contractor will count ESBE participation toward the Contract ESBE goal only the value of the work actually performed by a certified ESBE and only if the ESBE performs a commercially useful function in the work of a contract in accordance with 49 CFR, Subpart C, Part 26.55(c) and the Contract.
4. The Department will count ESBE participation for ESBE trucking firms in accordance with 49 CFR Part 26.55 et seq. The ESBE can count the entire value of services performed by ESBE trucks. The ESBE can count the value of non-ESBE trucking services up to the value of services performed by ESBE trucks used on the Contract. ESBE participation can be counted for the value of services of non-ESBE trucks that exceed the value of the services performed by ESBE trucks only in the amount of the fee or commission a ESBE receives as a result of the lease arrangement.

5. The Department will count ESBE participation for ESBE regular dealers, manufacturers and transaction expeditors in accordance with 49 C.F.R Part 26.55 et seq. Transaction expeditors/brokers will not receive ESBE credit for any portion of the cost of the materials and supplies themselves toward the Contract ESBE goal. For brokers, only the ESBE's fee or commission, and no part of the cost of the goods, count towards ESBE goals. The Department will determine if the fees are reasonable and not excessive as compared with fees customarily allowed for similar services. If a certified firm acts as a "regular dealer" in a given transaction, it is awarded ESBE credit equivalent to 60 percent of the value of the items it supplies on that contract. This credit is awarded in recognition of the value the ESBE adds to transaction and the risks that it takes.
6. If the Contractor is a certified ESBE, payments made to the Contractor for work that the Contractor is certified to perform, and performed by the Contractor will be counted toward the Contract ESBE goal. Payments made to the Contractor for work performed by non-ESBEs will not be applied toward the Contract ESBE goal.
7. When an ESBE subcontractor sublets part of the work of its contract to another firm, the value of the subcontract work may be counted towards the Contract ESBE goal only if the subcontractor itself is a certified ESBE. Work that an ESBE subcontractor subcontracts to a non-ESBE firm, cannot be counted towards the Contract ESBE goal.

#### H. Commercially Useful Function.

1. **Performance of Work.** The ESBE must perform the work with their own permanent employees, or employees recruited through traditional recruitment and/or employment centers. ESBEs must employ and control their own workforce, and cannot share employees with the Contractor, other subcontractors on the present project, or the renter-lessor of equipment being used on the present project. The ESBE firm must be responsible for all payroll and labor compliance requirements for all of their employees performing work on the Contract. Direct or indirect payments by any other contractor are not allowed.
2. **Managing Work.** The ESBE must manage the work themselves including the scheduling of work operations, ordering of equipment and materials, hiring/firing of employees, including supervisory employees, and preparing and submitting certified payrolls. The ESBE must supervise their portion of daily work operations of the project. With respect to materials and supplies used on the Contract, the ESBE must be responsible for preparing the estimate, negotiating price, determining quantity and quality, ordering the material, arranging delivery, installing, (where applicable), and paying for the material and supplies for the project.
3. **Responsibility of Work.** An ESBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce. The ESBE must not subcontract 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.
4. **Equipment of ESBE.** The ESBE must perform the work stated in the subcontract with their own equipment, whether owned or leased and operated on a long term agreement, not an ad hoc or contract by contract agreement. The equipment must be owned by the ESBE firm, or leased/rented from traditional equipment lease/rental sources. The equipment will not belong to the Contractor, any other subcontractor or lower tier subcontractors on the current project, or supplier of materials being installed by the ESBE firm.
5. **Lease of Equipment.** An ESBE firm may lease specialized equipment from a contractor, but not from the Contractor, if it is consistent with normal industry practices and at rates competitive for the area. Rental agreements must be for short periods of time, specify the terms of the agreement and involve specialty equipment to be used at the job site. The lease may allow the operator to remain on the lessor's payroll, if it is the generally accepted industry practice but the operation of the equipment must be subject to full control by the ESBE. The ESBE shall provide the operator for non-specialized equipment, and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required.
6. **ESBE Trucking.** ESBE trucking companies must perform a commercially useful function in accordance with 49 CFR Part 26.55 et seq. Contrived arrangements for the purpose of meeting ESBE goals will not be allowed. The ESBE must be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis, and must own and operate at least one fully, licensed, insured and operational truck used on the Contract.

The ESBE trucking firm is not permitted to obtain trucks from the Contractor to perform work on the project. The ESBE may lease trucks from a subcontractor working on the project, provided the trucks are obtained from the subcontractor prior to the project letting. The ESBE may also lease trucks from non-ESBEs and owner-operators. Bona fide lease agreements must be for the length of time needed by the ESBE on the

Contract and signed by both the ESBE and the firm(s), either certified ESBE or non-ESBE, from which the trucks will be leased. Leases must indicate that the ESBE has exclusive use and control over the truck. As per 49 CFR Part 26.55(d)(7), all leased trucks, including non-ESBE trucks must display the name and USDOT identification number issued for interstate commerce, of the ESBE firm on the outside of the truck. ESBE firms are expected to use the same trucks for ESBE credit on all projects so use of leased vehicles on a project-by-project basis is not permitted.

The Contractor shall have signed Hiring Agreements. Submit copies of these signed Hiring Agreements, and copies of all signed lease agreements to the RE prior to the trucking firm's commencing work on the project. Prior to the ESBE trucking firm beginning work on the Contract, ESBE Trucking firms will be required to complete the ESBE Trucking Verification (Form CR-274). The ESBE and Contractor must sign the form and the Contractor submit the original CR-274 form directly to the Department's RE, with a copy submitted to the DCR/AA. The Contractor is not permitted to complete any portion of the CR-274 form. The Contractor must prepare, sign and submit with the CR-267 - Monthly Report of Utilization of DBE/ESBE or SBE form, a Monthly Trucking Verification form (Form CR-271), identifying each truck owner, ESBE Certification number, company name and address, truck number, and commission or amount paid for all ESBE and non-ESBE truckers performing work on the project. Also, submit the form to the Department as per Section E of this Special Provision for the DCR/AA's review, approval and determination of credit toward the Contract goal. Failure to submit the forms may result in denial or limit of credit toward the Contract ESBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions or termination of the Contract as specified in Section 108.

7. **ESBE Regular Dealers.** ESBE regular dealers must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain 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 this contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

When the Contractor seeks credit toward the Contract ESBE goal using ESBE regular dealers, the ESBE Regular Dealer/Supplier Verification (Form CR-272) must be completed and signed by the ESBE regular dealer and then signed by the Contractor. Submit the form to the Department as per Section E of this Special Provision for the DCR/AA review, approval and determination of credit toward the Contract goal.

8. **ESBE Manufacturer.** ESBE manufacturers must be a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required for this Contract.
9. The Contractor shall not use an ESBE solely for the purpose of acting as an extra participant in a transaction, a contract or the Contract through which funds are passed in order to obtain the appearance of ESBE participation.

- I. **Good Faith Effort.** To demonstrate good faith efforts to meet the Contract ESBE goal, a Contractor shall, on an ongoing basis, document the steps it takes to obtain ESBE participation in accordance with 49 CFR Part 26.53 and Appendix A, including but not limited to the following:

1. Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified ESBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all ESBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the ESBE directory) and which are located in the area or surrounding areas of the project.

Solicit this interest as early in the acquisition process as practicable to allow the ESBEs to respond to the solicitation and submit a timely offer for the subcontract. Determine with certainty if the ESBEs are interested by taking appropriate steps to follow up initial solicitations.

2. Selecting portions of the work to be performed by ESBEs in order to increase the likelihood that the ESBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate ESBE participation, even when the

Contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates ESBE participation.

3. Providing interested ESBEs with detailed information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract. Attempt to contact all potential subcontractors on the same day and use similar methods to contact them;
4. Negotiating in good faith with interested ESBEs. Make a portion of the work available to ESBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available ESBE subcontractors and suppliers, so as to facilitate ESBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of ESBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for ESBEs to perform the work.

Consider a number of factors in negotiating with subcontractors, including ESBE subcontractors. Take a firm's price and capabilities as well as Contract goals into consideration. The fact that there may be some additional costs involved in finding and using ESBEs is not in itself sufficient reason for failure to meet the Contract ESBE goal, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a Contract with its own organization does not relieve the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from ESBEs if the price difference is excessive or unreasonable.

5. Not rejecting ESBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract ESBE goal. Another practice considered an insufficient good faith effort is the rejection of the ESBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract ESBE goal.

Inability to find a replacement ESBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original ESBE. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement ESBE, and it is not a sound basis for rejecting a prospective replacement ESBEs reasonable quote.

Attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

Keep a record of efforts, including the names of businesses contacted and the means and results of such contacts.

6. Making efforts to assist interested ESBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
7. Making efforts to assist interested ESBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ESBEs.

If the Contractor fails to meet the Contract ESBE goal, they must submit documented evidence of good faith effort(s) with the CR-268 final ESBE Report to the DCR/AA for review and approval. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Contractor met the goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract ESBE goal or made adequate good faith effort to do so, the Department will follow Section 105.

**J. Submission of Affirmative Action Program**



Contractors, subcontractors and professional service firms performing work for the Department are required to submit their company's Affirmative Action Program annually to the DCR/AA. Contractors must have an **approved** Affirmative Action Program on file in the DCR/AA no later than seven (7) State business days after the date of bid opening. No recommendations to award will be made without an approved Affirmative Action Program on file in the DCR/AA. Ensure subcontractors and professional service firms have an approved Affirmative Action Plan on file in the DCR/AA prior to their beginning work on a particular project.

The Annual Affirmative Action Program will include, but is not limited to the following:

1. Copy of company's comprehensive EEO/Affirmative Action Plan, , with a cover page that includes the company name and address, and signature of the Chief Executive or EEO Officer..
2. Copy of document designating the company's corporate EEO Officer, including the name, address and contact telephone number for the officer, and signature of the Chief Executive or President, on company letterhead..
3. Copy of the company's EEO Policy Statement on company letterhead, dated and signed by the Chief Executive and the EEO Officer.
4. Copy of the company's Sexual Harassment Policy on company letterhead.
5. EEO Legend such as letterhead, envelope, or published advertisement showing the company is an equal opportunity employer
6. Copy of document designating the company's the company's ESBE Liaison Officer to administer the firm's Emerging Small Business Program.
7. ESBE Affirmative Action Plan which is an explanation of affirmative action methods intended to be used to seek out and consider ESBEs as subcontractors, material suppliers or equipment lessors. This refers to the Contractor's ongoing responsibility, i.e., Emerging Small Business Enterprise/Affirmative Action activities after the award of the Contract and for the duration of the Contract.

**K. ESBE Liaison Officer.** Designate an ESBE Liaison Officer who shall be responsible for the administration of your ESBE program in accordance with the Contract, and ensuring that the Contractor complies with all provisions of 49 CFR Part 26.

**L. Consent by Department to Subletting.** The Department will not approve any subcontract proposed by the Contractor unless and until said Contractor has complied with the terms of the Contract.

**M. Conciliation.** Allegations of breach of any obligation contained in these ESBE provisions will be investigated by the DCR/AA, the Federal Highway Administration and/or the USDOT.

**N. Documentation**

1. **Requiring of Information.** The Department or the Federal funding agencies may at any time require information as specified in Section 107 and deemed necessary in the judgment of the Department to ascertain the compliance of any Bidder, Contractor or subcontractor with the terms of the Contract.
2. **Records and Reports.** The Contractor, subcontractors and other sub-recipients will keep such records as are necessary to determine compliance with its Emerging Small Business Enterprise Utilization obligations. These records kept will be designed to indicate:
  - a. The names of ESBE contractors, subcontractors, equipment lessors and material suppliers contacted for work on the Contract, including when and how contacted, and the specific Contract work items and other information provided to each.
  - b. Work, services and materials which are not performed or supplied by the Contractor.
  - c. The actual dollar value of work subcontracted and awarded to ESBEs, including specific Contract work items and cost of each work item.
  - d. The progress made and efforts taken in seeking out and utilizing ESBEs. This includes solicitations, specific Contract work items and the quotes and bids regarding those specific Contract work items, supplies, leases, or other contract items.
  - e. Detailed written documentation of all correspondence, contacts, telephone calls, including names and dates, to obtain the services of ESBEs on the Contract.
  - f. Records of all ESBEs and non-ESBEs who have submitted quotes/bids to the Contractor on the Contract.
  - g. Monthly CR-267 – Monthly Report, Utilization of DBE/ESBE or SBE, and other reports required for submission to the Department, hiring agreements, subcontracts, lease agreements, equipment rental agreements, supply tickets, delivery slips, payment information, and other records documenting ESBE utilization on the Contract.

- h. Documentation outlining EEO workforce information for the Contract.
  - i. Documentation outlining EEO and Affirmative Action efforts made in the administration and performance of the Contract.
- 3. Submission of Reports, Forms and Documentation.** Submit reports, forms and documentation, as required by the Department, on those contracts and other business transactions executed with ESBEs in such form and manner as may be prescribed by the Department. Failure to submit the required forms, reports or other documentation as required may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the contract as specified in Section 108. Submission of falsified forms, reports or other required documentation may result in termination of the Contract as specified in Section 108, investigation by the Department's Inspector General, or U.S.D.O.T., or both, and prosecution by the State Attorney General's Office or U.S. Department of Justice, or both.
- 4. Maintaining Records.** All 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, or the Federal funding agencies.
- O. Prompt Payment to Subcontractors.** On Federal Aid Projects, payment to subcontractors, equipment lessors, suppliers and manufacturers is made in accordance with Section 109.
- P. Non-Compliance.** Failure by the Contractor to comply with the ESBE program, rules, regulations of 49 CFR Part 26 and these provisions in the administration of the Contract may result in denial or limit of credit toward the Contract ESBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, debarment, or termination of the Contract as specified in Section 108. The Contractor may further be declared ineligible for future department contracts.

### FEDERAL AID PROJECT ATTACHMENT 3

#### REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY ON NJDOT FEDERAL AID PROJECTS

##### (MINORITY AND WOMEN WORK EMPLOYMENT GOAL OBLIGATIONS)

##### A. Employment Goals.

The goals for minority and female participation, in the covered area, expressed in percentage terms for the Contractor's aggregate work force in each trade, on all construction work are:

<b>Minority And Women Employment Goal Obligations For Construction Contractors and Subcontractors on Federal Aid Projects</b>		
<b>County</b>	<b>Minority Participation Percent</b>	<b>Women Participation Percent</b>
Atlantic	18.2	6.9
Bergen	22.6	6.9
Burlington	17.3	6.9
Camden	17.3	6.9
Cape May	14.5	6.9
Cumberland	16.0	6.9
Essex	17.3	6.9
Gloucester	17.3	6.9
Hudson	12.8	6.9
Hunterdon	17	6.9
Mercer	16.4	6.9
Middlesex	5.8	6.9
Monmouth	9.5	6.9
Morris	17.3	6.9
Ocean	17	6.9
Passaic	12.9	6.9
Salem	12.3	6.9
Somerset	17.3	6.9
Sussex	17	6.9
Union	17.3	6.9
Warren	1.6	6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or Federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its Federally involved and non-Federally involved construction.

The Contractor's compliance with the Executive Order 11246 and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4(3)a, and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade. Make a good faith effort to employ minorities and women evenly on each project. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for sole purpose of meeting the Contractor's goals is a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

If a project is located in more than one county, the minority work hour goal, only, will be determined by the county which serves as the primary source of hiring or, if workers are obtained almost equally from one or more counties, the single minority goal will be the average of the affected county goals.

## **B. Reporting Requirements.**

1. Provide the Department with written notification in triplicate within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification will list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
2. Directly provide the Department with employment workforce data of the number and work hours of minority and non-minority group members and women employed in each work classification for the Contract. The Contractor, subcontractors, professional service firms and others working on the project must submit this information via a web-based application through the New Jersey portal, Vendor Workforce Reporting Manager. Instructions on how to complete Form CC-257R are provided within the web application. Instructions for registering and receiving the authentication code to access the web based application can be found at the Contractor Manpower Project Reporting CC-257R website at: <http://www.state.nj.us/transportation/business/civilrights/pdf/cc257.pdf>.
  - a. On a monthly basis, submit Form CC-257R through the web based application within 10 days following the end of each reporting month.
  - b. In addition to the above, submit a hard copy of the electronic Form CC-257R to the RE within 10 days following the end of each reporting month
  - c. Submit a copy of the confirmation e-mail of the successful submission of Monthly Employment Utilization Report to the RE within 10 days following the end of each reporting month.
3. All employment data must be accurate and consistent with the certified payroll records. The Contractor is responsible for ensuring compliance with these reporting requirements. Failure of the Contractor, subcontractors, professional service firms and others working on the Contract, to report monthly employment data may result in payments being delayed or withheld as per 105.01, or impact the Contractor's prequalification rating with the Department.

## FEDERAL AID PROJECT ATTACHMENT 7

### PAYROLL REQUIREMENTS FOR NJDOT FEDERAL AID PROJECTS

- A. Payroll Reports.** Each Contractor and subcontractor shall furnish the RE with payroll reports for each week of contract work. Such reports shall be submitted within 10 days of the date of payment covered thereby and shall contain the following information:
1. Each employee's full name and an individually identifying number, (e.g. the last four digits of the employee's social security number) of each such employee.
  2. The ethnicity and gender of each employee.
  3. Each employee's specific work classification (s).
  4. Entries indicating each employee's basis hourly wage rate(s) and, where applicable, the overtime hourly wage rate(s). Any fringe benefits paid to approved plans, funds or programs on behalf of the employee must be indicated. Any fringe benefits paid to the employee in cash must be indicated.
  5. Each employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).
  6. Each employee's gross wage.
  7. The itemized deductions made.
  8. The net wages paid.
- B. Statement of Wages.** Each Contractor or subcontractor shall furnish a statement each week to the RE with respect to the wages paid each of its employees engaged in contract work covered by the Copeland Act, as amended during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor or by an authorized officer or employee of the Contractor or subcontractors who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on the Department's CR-347, or any form with identical wording. Each payroll submitted must be accompanied by a signed "Statement of Compliance".
- C. Maintaining Records.** Contractor and subcontractor shall maintain complete social security numbers and home address for employees. Government agencies are entitled to request or review all relevant payroll information, including social security numbers and addresses of employees. Contractors and subcontractors are required to provide such information upon request.
- D. Lack of Compliance.** Failure of the Contractor or subcontractor to comply with the payroll requirements may result in payment being delayed or withheld as specified in Section 105, default as specified in Section 108 or termination of the Contract as specified in Section 108.
- E. Diane B. Allen Equal Pay Act, N.J.S.A. 34:11-56.14b.** Pursuant to the DIANE B. ALLEN EQUAL PAY ACT, N.J.S.A. 34:11-56.14.b., the Contractor shall provide to the Commissioner of the New Jersey Department of Labor and Workforce Development, through certified payroll records required pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the Contract. The Contractor shall provide the Commissioner, throughout the duration of the Contract, with an update to the information whenever payroll records are required to be submitted pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.). Completed forms should be emailed to: [equalpayact@dol.nj.gov](mailto:equalpayact@dol.nj.gov). If online submission is not possible, the form should be mailed to: Equal Pay Act, New Jersey Department of Labor and Workforce Development, P.O. Box 110, Trenton, NJ 08625-110.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) website at:  
<https://nj.gov/labor/equalpay/equalpay.html>

LWD forms may be obtained from the online web site at:  
[https://nj.gov/labor/forms\\_pdfs/equalpayact/MW-562withoutfein.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf)

## STATE FUNDED PROJECT ATTACHMENT 1

### SMALL BUSINESS ENTERPRISE (SBE) UTILIZATION ON WHOLLY STATE FUNDED PROJECTS

- A. Utilization of Small Business Enterprises Businesses as Subcontractors, Transaction Expeditors, Regular Dealers, Manufacturers and Truckers.** The Department advises the Contractor and subcontractor that failure to carry out the requirements set forth in this attachment constitutes a material 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 physically included in all subcontract agreements in accordance with State of New Jersey requirements.
- B. Policy.** It is the policy of the Department that Small Business Enterprises (SBE), as defined in N.J.A.C. 12A:10A-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., shall have the maximum opportunity to participate in the performance of contracts financed wholly with State funds. In this regard, the Department and all Contractors shall take all necessary and reasonable steps to ensure that registered Small Business Enterprises are utilized on, compete for, and perform on NJDOT construction contracts.

#### C. Definitions

- 1. Small Business Enterprise.** A businesses which has its principal place of business in the State of New Jersey; is independently owned and operated; has no more than 100 full-time employees; has gross revenues that do not exceed the applicable Federal revenue standards referenced at N.J.A.C. 17:14-2.1; and satisfies any additional eligibility standards under this chapter.

Small businesses with no more than 100 full-time employees will be registered in one of the following three categories:

- a. Small business with gross revenues that do not exceed \$3 million.
- b. Small businesses with gross revenues that do not exceed 50 percent of the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, incorporated herein by reference, and as may be adjusted periodically.
- c. Small business with gross revenues that do not exceed the applicable annual revenue standards set forth in federal regulation at 13 CFR 121.201, incorporated herein by reference, as may be adjusted periodically.

The business must be independently owned and operated, with management being responsible for both its daily and long-term operation, as well as owning at least 51 percent interest in the business.

Businesses must be incorporated or registered with the Division of Revenue & Enterprise Services to do business in the State and have its principal place of business in New Jersey, defined when:

- a. 51 percent or more of its employees work in New Jersey supported by paid New Jersey unemployment taxes or;
  - b. 51 percent or more of its business operations/activities occur in New Jersey supported by income and/or business tax returns.
  - c. The business must be a sole proprietorship, partnership, limited liability company or corporation with 100 or fewer employees in full-time positions, not including:
    1. Seasonal and part-time employees employed for less than 90 days, if seasonal and casual part-time employment are common to that industry and
    2. Consultants employed under contracts for which the business wants to be eligible as a small business.
- 2. Commercially Useful Function (CUF).** A SBE performs 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 perform a commercially useful function, the SBE must also be responsible, with respect to materials and supplies used on the contract, for preparing the estimate, negotiating price, determining quality and quantity, ordering the material, arranging delivery, installing (where applicable), and paying for the material and supplies itself for the project.

3. **Transaction expeditor (broker).** A SBE who arranges or expedites transactions and who arranges for material drop shipments.
4. **SBE regular dealers.** A firm that must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain a store, warehouse, or other establishment in which the materials, supplies, articles or equipment required under this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
5. **SBE manufacturer.** A firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for the Contract.
6. **Good faith effort (GFE).** Efforts to achieve a SBE goal or other requirement of N.J.A.C. 12A: 10A-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Efforts to include firms not certified as SBEs in the state where the contract is being let are consequently not good faith efforts to meet a SBE contract goal.

**D. Compliance.** The Contractor is responsible for compliance as specified in Section 105.

**E Contractor SBE Goal Obligations.** Ensure that SBEs have an equal opportunity to receive and participate in contracts and subcontracts financed in whole with State funds in performing work with the Department. Take all necessary and reasonable steps in accordance with the Contract to ensure that SBEs are given equal opportunity to compete for and to perform on the Department’s wholly State funded projects. Do not discriminate in the award and performance of any Contract obligation including, but not limited to, performance of obligations on wholly State funded contracts, as specified in Section 107.

1. Post Award Obligations

- a. Give SBEs equal consideration with non-small business firms in negotiation for any subcontracts, purchase orders or leases.
- b. Attempt to obtain qualified SBEs to perform the work. A directory of registered Small Businesses Enterprise firms can be found in the New Jersey Selective Assistance Vendor Information (NJSAVI) database online at: [https://www20.state.nj.us/TYTR\\_SAVI/vendorSearch.jsp](https://www20.state.nj.us/TYTR_SAVI/vendorSearch.jsp)

2. Affirmative Action After Award of the Contract

- a. **Subletting.** If at any time following the award of the 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, take affirmative action:
  - (1) Notify the RE, 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) Submit the Post-Award SBE Certification Form to the Regional Supervising Engineer with the application to sublet, or prior to purchasing material or leasing equipment. Obtain Post Award SBE Certification forms from the RE.
  - (3) Efforts made to identify and retain a SBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with the original SBE prove unsuccessful, shall be followed as specified for SBE subcontractors in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
  - (4) Notification of a SBE subcontractor’s termination will be the same as for SBE subcontractors, specified in Section 108. Send notice in writing to the Department through the RE, with a copy to DCR/AA. Said termination notice will include the firm’s ethnic classification, whether the firm is a SBE and the detailed reason(s) for termination.
- b. **Selection and Retention of Subcontractors.** Do not discriminate in the selection and retention of subcontractors, including procurement of materials and leases of equipment as specified in 108.01. Provide the RE with a listing of firms, organizations or enterprises solicited and those utilized as subcontractors on the proposed project. Such listing shall clearly delineate which firms are classified as SBEs. Provide the RE with subcontract agreements for all subcontractors performing work on the Contract as specified in Section 108.

- (1) Efforts made to identify and retain a SBE as a replacement subcontractor, lower tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker when the arrangements with the original SBE prove unsuccessful, shall be the same as for SBE subcontractors and submitted as specified in Section 108. Work in the category concerned shall not begin until such approval is granted in writing by the Department.
  - (2) Notification of a SBE firm's termination will be as specified in Subsection 108.01. Send notice in writing to the Department through the RE. Said termination notice will include the firm's ethnic classification, whether the firm is a SBE and the detailed reason(s) for termination.
- c. **Meeting Contract SBE Goal.** Report attainment toward meeting the Contract SBE goal by submitting monthly, all SBE participation, to the Department's RE and DCR/AA Contract Compliance Unit using the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form. The form is due by the 5<sup>th</sup> of the month, and must list all SBEs used on the Contract to meet the Contract goal, the specific Contract work items each SBE is performing, whether the SBE is performing full or partial work on the items, and the amount paid to each SBE each month. Failure to report the information, and accurately report it may result in payment being delayed or withheld as specified in Section 105, assessing sanctions, or termination of the Contract as specified in Section 108.
  - d. **Termination, Substitution or Replacement of SBEs.** Make good faith efforts to replace a SBE that is terminated or has otherwise failed to complete its work on the Contract with another registered SBE, to the extent needed to meet the Contract SBE goal. Notify the DCR/AA immediately of the SBE's inability or unwillingness to perform and provide reasonable documented evidence. Prior to termination, substitution or replacement of a SBE subcontractor, lower-tier subcontractor, transaction expeditor, regular dealer, supplier, manufacturer or trucker, submit a Revised CR-266 – Schedule of DBE/ESBE/SBE Participation form to the Department naming the replacement SBE firm(s), type of work performed, specific Contract work items, whether the SBE is performing full or partial work on the items, dollar value and percent of total Contract for each SBE firm. Submit detailed written explanation of why each change is being made, including documented evidence of good faith effort(s) with the submission of the revised Form CR- 266. Submit along with the revised CR-266: 1) a completed Confirmation of SBE Firm (Form CR-273) to demonstrate direct written confirmation from each SBE firm participating on the Contract, confirming the kind and amount of work that was provided on the Contractor's CR-266, and if applicable; 2) a completed SBE Regular Dealer/Supplier Verification (Form CR-272) for all SBE Regular Dealers/Suppliers listed on the revised CR-266; and if applicable, 3) a completed SBE Trucking Verification (Form CR-274) for all SBE truckers listed on the revised CR-266 form. The Contractor is not permitted to complete any portion of the CR-273, CR-272 or CR-274 forms. Termination, substitution or replacement of SBEs shall be made as specified in Section 108. Termination or replacement of SBE cannot be made without prior written approval of the Department as per 108.01.
  - e. **Submission of Good Faith Effort Documentation.** If the Contractor is unable to meet the Contract goal for SBE participation, submit to the DCR/AA for review and approval, documented evidence of good faith efforts along with the monthly CR-267 form. This submission must include written details addressing each of the good faith efforts outlined in the Contract. Submittal of such information does not imply DCR/AA approval.

**F. SBE Goals for this Contract.** This Contract includes a goal of awarding \_\_\_\_\_ percentage of the Total Contract Price to subcontractors qualifying as SBEs.

**NOTE: SUBCONTRACTING GOALS ARE NOT APPLICABLE IF THE PRIME CONTRACTOR IS A REGISTERED SMALL BUSINESS ENTERPRISE (SBE) FIRM.**

The Department's DCR/AA has sole authority to determine whether the Contractor met the Contract goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract SBE goal or made adequate good faith efforts to do so, the Department will follow Section 105.

**G. Counting SBE Participation.**

1. Each SBE is subject to a registration procedure to ensure its SBE eligibility status prior to the award of Contract. All SBEs working on the Contract must be registered SBEs. Only Small Business Enterprises registered prior to the date of bid, or prospective Small Business Enterprises that have submitted to the New Jersey Commerce and Economic Growth Commission on or before the day of bid, a completed "State of New



Jersey Small Business Vendor Registration Form” and all the required support documentation, will be considered in determining whether the Contractor has met the established Contract SBE goal. Early submission of required documentation is encouraged.

2. The Department determines the percentage of SBE participation that will be counted toward the Contract SBE goal. Once a firm is determined to be a bona fide SBE by the New Jersey Commerce and Growth Commission, the total dollar value of the contract awarded to the SBE is counted toward the applicable goal.
3. The Contractor will count SBE participation toward the Contract SBE goal only the value of the work actually performed by a SBE when that SBE performs a commercially useful function in the work of a contract as per Section H of this Special Provision Attachment.
4. 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 registered SBE, the actual payments made to the Joint Venture for work performed by the SBE member, will be applied toward the Contract SBE goal. Payments made to the Joint Venture for work performed by a non-small business firm will not be applied toward the Contract SBE goal.
5. If the Contractor is a registered SBE, payments made to the Contractor for work that the Contractor is registered to perform, and performed by the Contractor will be applied toward the Contract SBE goal. Payments made to the Contractor for work performed by non-SBEs will not be applied toward the Contract SBE goal.
6. When a SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted towards the SBE goal only if the subcontractor itself is a SBE. Work that a SBE subcontracts to a non-SBE firm does not count toward the Contract SBE goal.

#### **H. Commercially Useful Function**

1. **Performance of Work.** The SBE must perform the work with their own permanent employees, or employees recruited through traditional recruitment and/or employment centers. SBEs must employ and control their own workforce, and cannot share employees with the Contractor, other subcontractors on the present project, or the renter-lessor of equipment being used on the present project. The SBE firm must be responsible for all payroll and labor compliance requirements for all of their employees performing work on the Contract. Direct or indirect payments by any other contractor are not allowed.
2. **Managing Work.** The SBE must manage the work themselves including the scheduling of work operations, ordering of equipment and materials, hiring/firing of employees, including supervisory employees, and preparing and submitting certified payrolls. The SBE must supervise their portion of daily work operations of the project. With respect to materials and supplies used on the Contract, the SBE must be responsible for preparing the estimate, negotiating price, determining quantity and quality, ordering the material, arranging delivery, installing, (where applicable), and paying for the material and supplies for the project.
3. **Responsibility of Work.** A SBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce. The SBE must not subcontract 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.
4. **Equipment of SBE.** The SBE must perform the work stated in the subcontract with their own equipment, whether owned or leased and operated on a long term agreement, not an ad hoc or contract by contract agreement. The equipment must be owned by the SBE firm, or leased/rented from traditional equipment lease/rental sources. The equipment will not belong to the Contractor, any other subcontractor or lower tier subcontractors on the current project, or supplier of materials being installed by the SBE firm.
5. **Lease of Equipment.** A SBE firm may lease specialized equipment from a contractor, but not from the Contractor, if it is consistent with normal industry practices and at rates competitive for the area. Rental agreements must be for short periods of time, specify the terms of the agreement and involve specialty equipment to be used at the job site. The lease may allow the operator to remain on the lessor’s payroll, if it is the generally accepted industry practice but the operation of the equipment must be subject to full control by the SBE. The SBE shall provide the operator for non-specialized equipment, and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required.
6. **SBE Trucking.** SBE trucking companies must perform a commercially useful function. Contrived arrangements for the purpose of meeting SBE goals will not be allowed. The SBE must be responsible for the management and supervision of the entire trucking operation on a contract-by-contract basis, and must own and operate at least one fully, licensed, insured and operational truck used on the Contract.

The SBE trucking firm is not permitted to obtain trucks from the Contractor to perform work on the project. The SBE may lease trucks from a subcontractor working on the project, provided the trucks are obtained from the subcontractor prior to the project letting. Bona fide lease agreements must be for the length of time needed by the SBE on the Contract and signed by both the SBE and the firm(s), either certified SBE or non-SBE, from which the trucks will be leased. Leases must indicate that the SBE has exclusive use and control over the truck. All leased trucks must display the name and USDOT identification number issued for interstate commerce, of the SBE firm, on the outside of the truck. SBE firms are expected to use the same trucks for SBE credit on all projects so use of leased vehicles on a project-by-project basis is not permitted.

The Contractor shall have signed Hiring Agreements. Submit copies of these signed Hiring Agreements, and copies of all signed lease agreements to the RE prior to the trucking firm's commencing work on the project. Prior to the SBE trucking firm beginning work on the Contract, SBE Trucking firms will be required to complete the SBE Trucking Verification (Form CR-274). The SBE and Contractor must sign the form and the Contractor submit the original CR-274 form directly to the Department's RE, with a copy submitted to the DCR/AA. The Contractor is not permitted to complete any portion of the CR-274 form. The Contractor must prepare, sign and submit along with the CR-267 – Monthly Report of Utilization of DBE/ESBE or SBE form, a Monthly Trucking Verification form (CR-271), identifying each truck owner, SBE Certification number, company name and address, truck number, and commission or amount paid for all SBE and non-SBE truckers performing work on the project. Also, submit the form to the Department as per Section E of this Special Provision for the DCR/AA's review, approval and determination of credit toward the Contract goal. Failure to submit the forms may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions or termination of the Contract as specified in Section 108.

7. **SBE Regular Dealers.** SBE regular dealers must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer must own, operate or maintain 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 this Contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  8. **SBE Manufacturers.** SBE manufacturers must be a firm that operates or maintains a factory or establishment that produces on the premises, the materials, supplies, articles, or equipment required for this Contract.
  9. The Contractor shall not use a SBE solely for the purpose of acting as an extra participant in a transaction, a contract or the Contract through which funds are passed in order to obtain the appearance of SBE participation.
- I. Good Faith Effort.** To demonstrate good faith efforts to meet the Contract SBE goal, a Contractor shall, on an ongoing basis, adequately document the steps it takes to obtain SBE participation, including but not limited to the following:
1. Conducting market research to identify qualified potential small business subcontractors and suppliers and soliciting through all reasonable and available means, the interest of registered SBEs that have the capability to perform the work of the Contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all registered SBEs listed in the New Jersey Selective Assistance Vendor Information (NJSAVI) database that specialize in the areas of work desired (as noted in SAVI) and which are located in the area or surrounding areas of the project.
- Solicit this interest as early in the acquisition process as practicable to allow the SBEs to respond to the solicitation and submit a timely offer for the subcontract. Determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
- Request a listing of small businesses from the New Jersey Department of the Treasury, Division of Property Management and Construction if none are known to the Contractor
2. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goals will be achieved. This includes, where appropriate, breaking out Contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate SBE participation, even when the

Contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates SBE participation.

3. Providing all potential SBE subcontractors with detailed information about the plans, specifications, and requirements of the Contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract. Attempt to contact all potential subcontractors on the same day and use similar methods to contact them.
4. Negotiating in good faith with interested SBEs. Make a portion of the work available to SBE subcontractors and suppliers and select those portions of the work or material needs consistent with the available SBE subcontractors and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for SBEs to perform the work.

Consider a number of factors in negotiating with subcontractors, including SBE subcontractors. Take a firm's price and capabilities as well as Contract goals into consideration. The fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for failure to meet the Contract SBE goal, as long as such costs are reasonable. The ability or desire of a Contractor to perform the work of a Contract with its own organization does not relieve the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

5. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract SBE goal. Another practice considered an insufficient good faith effort is the rejection of the SBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the Bidder to accept unreasonable quotes in order to satisfy the Contract SBE goal.

Inability to find a replacement SBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original SBE. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the Contractor of the obligation to make good faith efforts to find a replacement SBE, and it is not a sound basis for rejecting a prospective replacement SBE's reasonable quote. Attempt, wherever possible, to negotiate prices with potential subcontractors which submitted higher than acceptable price quotes.

Keep a record of efforts, including the names of businesses contacted and the means and results of such contacts.

6. Making efforts to assist interested SBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
7. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

If the Contractor fails to meet the Contract SBE goal, they must submit documented evidence of good faith effort(s) to meet the goal with the CR-268 final SBE Report to the DCR/AA for review and approval. Submittal of such information does not imply DCR/AA approval. The Department's DCR/AA has sole authority to determine whether the Contractor met the Contract SBE goal or made adequate good faith efforts to do so. If the DCR/AA determines that the Contractor has failed to meet the Contract SBE goal or made adequate good faith effort to do so, the Department will follow Section 105.

#### **J. Submission of Affirmative Action Program**

Contractors, subcontractors and professional service firms performing work for the Department are required to submit their company's Affirmative Action Program annually to the DCR/AA. Contractors must have an **approved** Affirmative Action Program on file in the DCR/AA no later than seven (7) State business days after the date of bid opening. No recommendations to award will be made without an approved Affirmative Action Program on file in the DCR/AA. Ensure subcontractors and professional service firms have an approved Affirmative Action Plan on file in the DCR/AA prior to their beginning work on a particular project.

The Annual Affirmative Action Program will include, but is not limited to the following:

1. Copy of company's comprehensive EEO/Affirmative Action Plan, with a cover page that includes the company name and address, and signature of the Chief Executive or EEO Officer.
2. Copy of document designating the company's corporate EEO Officer, including the name, address and contact telephone number for the officer, and signature of the Chief Executive or President, on company letterhead.
3. Copy of the company's EEO Policy Statement on company letterhead, dated and signed by the Chief Executive and the EEO Officer.
4. Copy of the company's Sexual Harassment Policy on company letterhead.
5. EEO Legend such as letterhead, envelope, or published advertisement showing the company is an equal opportunity employer.
6. Copy of document designating the company's SBE Liaison Officer to administer the firm's Small Business Program.
7. SBE Affirmative Action Plan which is an explanation of affirmative action methods intended to be used to seek out and consider SBEs as subcontractors, material suppliers or equipment lessors. This refers to the Contractor's ongoing responsibility, i.e., Small Business Enterprise/Affirmative Action activities after the award of the Contract and for the duration of the Contract.

**K. SBE Liaison Officer.** Designate a SBE Liaison Officer who shall be responsible for the administration of your SBE program in accordance with the Contract, and ensuring that the Contractor complies with all provisions of the SBE Program.

**L. Consent by Department to Subletting.** The Department will not approve any subcontract proposed by the Contractor unless and until said Contractor has complied with the terms of the Contract.

**M. Conciliation.** In cases of alleged discrimination regarding these and all equal employment opportunity provisions and guidelines, investigations and conciliation will be undertaken by the DCR/AA.

**N. Documentation**

1. **Requiring of Information.** The Department or the State funding agencies may at any time require information as specified in Section 107.02 and deemed necessary in the judgment of the Department to ascertain the compliance of any Bidder, Contractor or subcontractor with the terms of the Contract.
2. **Record and Reports.** The Contractor, subcontractors and other sub-recipients will keep such records as are necessary to determine compliance with its SBE obligations. These records kept will be designed to indicate:
  - a. The names of SBE contractors, subcontractors, transaction expeditors and material suppliers contacted for work on the Contract, including when and how contacted, and the specific Contract work items and other information provided to each.
  - b. Work, services and materials which are not performed or supplied by the Contractor.
  - c. The actual dollar value of work subcontracted and awarded to SBEs, including specific Contract work items and cost of each work item.
  - d. The progress being made and efforts taken in seeking out and utilizing SBEs to include: solicitations, specific Contract work items and the quotes and bids regarding those specific Contract work items, supplies, leases, or other contract items, etc.
  - e. Detailed written documentation of all correspondence, contacts, telephone calls, etc., including names and dates/times, to obtain the services of SBEs on the Contract.
  - f. Records of all SBEs and non-SBEs who have submitted quotes/bids to the Contractor on the Contract.
  - g. Monthly CR-267 – Monthly Report, Utilization of DBE/ESBE or SBE, and other reports required for submission to the Department, hiring agreements, subcontracts, lease agreements, equipment rental agreements, supply tickets, delivery slips, payment information, and other records documenting SBE utilization on the Contract.
  - h. Documentation outlining EEO workforce information for the Contract.
  - i. Documentation outlining EEO and Affirmative Action efforts made in the administration and performance of the Contract.
3. **Submission of Reports, Forms and Documentation.** Submit reports, forms and documentation, as required by the Department, on those contracts and other business transactions executed with SBEs in such form and manner as may be prescribed by the Department. Failure to submit the required forms, reports or other documentation as required may result in payment being delayed or withheld as specified in Section 105,

assessing sanctions, or termination of the contract as specified in Section 108. Submission of falsified forms, reports or other required documentation may result in termination of the Contract as specified in Section 108, investigation by the Department's Inspector General, and prosecution by the State Attorney General's Office.

- 4. Maintaining Records.** All 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, or the State funding agencies.
- O. Prompt Payment to Subcontractors.** Payment to subcontractors, equipment lessors, suppliers and manufacturers is made in accordance with Section 109.
- P. Non-Compliance.** Failure by the Contractor to comply with the SBE program, rules and regulations in the administration of the Contract may result in denial or limit of credit toward the Contract SBE goal, payment being delayed or withheld as specified in Section 105, assessing sanctions, liquidated damages as specified in Section 108, default as specified in Section 108, debarment, or termination of the Contract as specified in Section 108. The Contractor may further be declared ineligible for future Department contracts.

## STATE FUNDED PROJECT ATTACHMENT 5

### PAYROLL REQUIREMENTS FOR WHOLLY STATE FUNDED PROJECTS

- A. Payroll Reports.** Each Contractor and subcontractor shall furnish the RE with payroll reports for each week of contract work. Such reports shall be submitted within 10 days of the date of payment covered thereby and shall contain the following information:
1. Each employee's full name and address of each such employee.
  2. The ethnicity and gender of each employee.
  3. Each employee's specific work classification (s).
  4. Entries indicating each employee's basis hourly wage rate(s) and, where applicable, the overtime hourly wage rate(s). Any fringe benefits paid to approved plans, funds or programs on behalf of the employee must be indicated. Any fringe benefits paid to the employee in cash must be indicated.
  5. Each employee's daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted).
  6. Each employee's gross wage.
  7. The itemized deductions made.
  8. The net wages paid.
- B. Statement of Wages.** Each Contractor or subcontractor shall furnish a statement each week to the RE with respect to the wages paid each of its employees engaged in contract work covered by the New Jersey Prevailing Wage Act during the preceding weekly payroll period. The statement shall be executed by the Contractor or subcontractor or by an authorized officer or employee of the Contractor or subcontractors who supervises the payment of wages. Contractors and subcontractors must use the certification set forth on NJ Department of Labor Payroll Certification for Public Works Project (R-08-12-08), or any form with identical wording.
- C. Maintaining Records.** Contractor and subcontractor shall maintain complete social security numbers and home address for employees. Government agencies are entitled to request or review all relevant payroll information, including social security numbers and addresses of employees. Contractors and subcontractors are required to provide such information upon request.
- D. Lack of Compliance.** Failure of the Contractor or subcontractor to comply with the payroll requirements may result in payment being delayed or withheld as specified in Section 105, default as specified in Section 108 or termination of the Contract as specified in Section 108.
- E. Diane B. Allen Equal Pay Act, N.J.S.A. 34:11-56.14b.** Pursuant to the DIANE B. ALLEN EQUAL PAY ACT, N.J.S.A. 34:11-56.14.b., the Contractor shall provide to the Commissioner of the New Jersey Department of Labor and Workforce Development, through certified payroll records required pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.), information regarding the gender, race, job title, occupational category, and rate of total compensation of every employee of the employer employed in the State in connection with the Contract. The Contractor shall provide the Commissioner, throughout the duration of the Contract, with an update to the information whenever payroll records are required to be submitted pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.). Completed forms should be emailed to: [equalpayact@dol.nj.gov](mailto:equalpayact@dol.nj.gov). If online submission is not possible, the form should be mailed to: Equal Pay Act, New Jersey Department of Labor and Workforce Development, P.O. Box 110, Trenton, NJ 08625-110.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) website at:  
<https://nj.gov/labor/equalpay/equalpay.html>

LWD forms may be obtained from the online web site at:  
[https://nj.gov/labor/forms\\_pdfs/equalpayact/MW-562withoutfein.pdf](https://nj.gov/labor/forms_pdfs/equalpayact/MW-562withoutfein.pdf)