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## DISADVANTAGED BUSINESS ENTERPRISE AND EMERGING SMALL BUSINESS ENTERPRISE PARTICIPATION

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A federal requirement that must be addressed on projects financed in whole or in part through the U.S. Department of Transportation (DOT) is the mandated Disadvantaged Business Enterprise participation program. Consultant contracts awarded with U.S. DOT financial assistance are subject to Title 49, Part 26, Code of Federal Regulations (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." In order to ensure the NJDOT achieves its federally mandated statewide overall DBE goal, the NJTPA encourages the participation of Disadvantaged Business Enterprises (DBE) or Emerging Small Business Enterprises (ESBE), as defined below, in the performance of consultant contracts financed in whole or in part with U.S. DOT funding. ***For this study drawing on U.S. DOT funding under a NJTPA grant, the DBE/ESBE participation goal shall be at minimum 9.95%.***

The NJTPA has a long-standing commitment to maximize business opportunities available to DBEs and ESBEs. The consultant's contract is subject to all federal, state, and local laws, rules, and regulations, including but not limited to, non-discrimination in employment and affirmative action for equal employment opportunity. The consultant's contract obligates the consultant to aggressively pursue DBEs and ESBEs for participation in the performance of contracts and subcontracts financed in whole or in part with U.S. DOT funding. The consultant cannot discriminate on the basis of race, color, national origin, or sex in the award and performance of federally assisted contracts. Prior to the award of a consultant contract, the consultant must demonstrate sufficient reasonable efforts to utilize DBE/ESBE firms.

### ***Disadvantaged Business Enterprise***

A Disadvantaged Business Enterprise (DBE) is defined in 49 CFR Part 26 and FTA C 4716.1A, as "a small business concern (from Section 3 of the Small Business Act), which has met the following criteria and has obtained certification as a DBE by NJDOT, NJ TRANSIT or PANYNJ:

1. at least 51 percent owned by one or more 'socially and economically disadvantaged' individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more 'socially and economically disadvantaged' individuals; and
2. whose management and daily business operations are controlled by one or more of the 'socially and economically disadvantaged' individuals who own it.

'Socially and economically disadvantaged' is defined as individuals who are citizens of the United States (or lawfully permanent residents) and who are: "Black Americans," "Hispanic Americans", "Native Americans," "Asian-Pacific Americans", "Asian-Indian Americans", "Women" (regardless of race, ethnicity, or origin); or "Other" (disadvantaged pursuant to Section 8 of the Small Business Act).

A database of DBEs certified under the State of New Jersey's Unified Certification Program (UCP) may be found using the following webpage link:

<https://njucp.dbesystem.com/>

### ***Emerging Small Business Enterprise***

The Emerging Small Business Enterprise (ESBE) referred to herein is defined as a firm that has met the following criteria and obtained small business certification as an ESBE by NJDOT:

1. A firm must meet the criteria for a small business as defined by the Small Business Administration in 13 CFR Part 121, which includes annual receipts from all revenues, including affiliate receipts which equates to the annual arithmetic average over the last 3 completed tax years, or by the number of employees.
2. The small business must be owned by individuals who do not exceed the personal net worth criteria established in 49 CFR Part 26 which is \$750,000.

All appropriately certified DBEs fall into this definition due to their size.

The NJDOT's directory of certified ESBEs may be found on the following webpage:

<http://www.state.nj.us/transportation/business/procurement/ProfServ/information.shtm>.

### ***DBE/ESBE Participation Documentation***

Disadvantaged Business Enterprise/Emerging Small Business Enterprise (DBE/ESBE) participation is an important goal of the NJTPA. The Consultant must demonstrate sufficient reasonable efforts to meet the DBE/ESBE contract goals as identified herein. Consultants can meet this requirement in either of two ways. First the prime consultant can meet the goal, documenting commitments of participation by DBE/ESBE firms sufficient for this purpose. Second, if a consultant does not meet this goal, they must document and demonstrate to the NJTPA's satisfaction that they made adequate good faith efforts to do so as further described below.

To demonstrate compliance with the goal in their proposals consultants should include:

1. the names and addresses of each DBE/ESBE that will participate in the contract;
2. the description and estimated fee or dollar amount of the work each DBE/ESBE will perform (to be included in the Cost Proposal, no cost information is to be provided in the Technical Proposal);
3. written documentation of the prime consultant's commitment to use each DBE/ESBE in the contract whose participation it submits to meet the goal; and
4. written confirmation from each DBE/ESBE that it is participating in the contract as provided in the prime consultant's commitment.

Evidence of DBE/ESBE certification issued by the NJDOT, NJ TRANSIT or PANYNJ may be requested prior to award of contract.

***Note:*** Although the NJTPA encourages the use of small businesses, minority-owned firms and women's business enterprises on all of our projects, the State of New Jersey's MBE/WBE or SBE Certifications issued by the Department of Treasury ***do not*** satisfy this federal requirement for DBE certification – nor do firms certified as a DBE by other states. ***Firms certified as a SBE, MBE or WBE by other agencies - or as a DBE by other states - are encouraged to apply for certification as an ESBE by the NJDOT, or as a DBE by the NJDOT, NJ TRANSIT, or PANYNJ.***

The prime consultant must document, in writing, all of the steps that led to any selection of the DBE/ESBE firm(s).

### ***Good Faith Efforts***

If the contract goal is not met by the apparent successful firm, evidence of good faith efforts must be presented to the NJTPA for consideration.

To demonstrate sufficient reasonable efforts to meet the DBE or ESBE contract goals, a respondent shall document the steps it has taken to obtain DBE or ESBE participation, including but not limited to the following efforts.

1. Attendance at an information meeting, if any, to inform the DBEs or ESBEs of prime contracting and subcontracting opportunities under a given solicitation.
2. Advertisement in general circulation media, trade association publications, and small business publications for at least 20 days before proposals are due. If 20 days are not available, publication for a shorter reasonable time may be acceptable.
3. Written notification to DBEs or ESBEs that their interest in the contract is solicited.
4. Efforts made to select portions of work proposed to be performed by DBEs or ESBEs in order to increase the likelihood of achieving the stated goal.
5. Efforts made to negotiate with DBEs or ESBEs for specific proposals including at a minimum:
  - A. The names, addresses and telephone numbers of DBEs or ESBEs that were contacted;
  - B. A description of the information provided to DBEs or ESBEs regarding the scope of work for the specified solicitation; and
  - C. A statement of why additional agreements with DBEs or ESBEs were not reached.
6. Information regarding each DBE or ESBE the contractor contacted and rejected as unqualified and the reasons for the contractor's conclusion.
7. Efforts made to assist the DBE or ESBE in obtaining bonding or insurance required by the contractor.

**Note:** If the NJTPA determines that the apparent successful firm has failed to meet the requirements of this section, the consultant will be afforded the opportunity for an administrative reconsideration of that determination prior to the award or rejection of the contract. As part of the administrative reconsideration process, the consultant will have the opportunity to provide additional written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The NJTPA will send the consultant a written decision on reconsideration, explaining the basis for the finding that the consultant did or did not meet the goal or make adequate good faith efforts to do so.