

ATTACHEMENT B

DISADVANTAGED BUSINESS ENTERPRISE/AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (DBE/ACDBE) AND SMALL BUSINESS ENTERPRISE (SBE) UTILIZATION

DEPARTMENT OF TRANSPORTATION POLICY

It is the policy of the Department of Transportation that socially and economically Disadvantaged Business Enterprise/Airport Concessions Disadvantaged Business Enterprise (DBE/ACDBEs) as defined at Title 49 Code of Federal Regulations, Part 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE/ACDBE requirements of 49 CFR, Part 23 and 26, shall apply to any agreement resulting from this procurement.

Participants in this procurement agree to ensure that DBE/ACDBEs, as defined at 49 CFR, Part 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, the Proposers/Bidders/Qualifiers shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23 and 26, and the Airport's DBE/ACDBE Program to ensure that DBE/ACDBEs have the maximum opportunity to compete for the performance of contracts. Neither the Proposers/Bidders/Qualifiers nor the selected contractor shall discriminate on the basis of race, color, national origin or sex in the performance of a resulting DOT-assisted contract.

I. OVERALL GOALS

The term ***"disadvantaged business"*** means a small business concern, which is at least 51 percent owned by one or more socially and economically disadvantaged persons or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Socially and economically disadvantaged individuals" means a citizen of the United States (or lawfully admitted permanent resident) who meets the criteria set forth in 49 CFR, Part 26.5. The Airport annually sets an overall DBE/ACDBE goal and triennially sets a DBE/ACDBE goal for work to be performed under Airport contracts, including construction activity procurement of common goods and services, personal service contracts, concessions and rental car contracts. While the percentage of certified DBE/ACDBE, utilization may vary from contract to contract due to the availability of DBE/ACDBEs in any given line of work, the Airport believes that overall goals to be realistically obtainable over time with the assistance of the federal government, the business community, and DBE/ACDBE organizations.

In order to meet Federal requirements and to provide for maximum participation of certified DBE/ACDBEs, the Airport specifies a percentage of participation goals in contracts with subcontracting opportunities (the percentage may be zero).

II. CONTRACT GOALS

The Airport has specified a contract specific DBE/ACDBE/SBE goal for the work to be performed under this contract.

- A. When a DBE/ACDBE/SBE participates in a contract, you count only the value of the work actually performed by the DBE/ACDBE/SBE toward the DBE/ACDBE/SBE goals.

1. Count the entire amount of the portion of a contract (or other contract not covered by Paragraph (A) (2) of this section) that is performed by DBE/ACDBE/SBEs own forces. Include the cost of supplies and materials obtained by the DBE/ACDBE/SBEs for the work of the contract, including supplies purchased or equipment leased by the DBE/ACDBE/SBEs subcontractor purchases or leases from the prime contractor or its affiliate).
2. Count the entire amount of fees or commissions charged by an DBE/ACDBE/SBEs firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE/ACDBE/SBE goals, provided you determine the fee to be reasonable and not excessive as compared with less customarily allowed for similar services.
3. When a DBE/ACDBE/SBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE/ACDBE/SBE goals only if the DBE/ACDBE/SBE subcontractor is itself a DBE/ACDBE/SBE. Work that a DBE/ACDBE/SBE subcontracts to a non-DBE/ACDBE/SBE firm does not count toward DBE/ACDBE/SBE goals.
 - a) When a DBE/ACDBE/SBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract the DBE/ACDBE/SBE performs with its own forces toward DBE/ACDBE/SBE goal.
 - b) Count expenditures to a DBE/ACDBE/SBE contractor towards DBE/ACDBE/SBE goals only if the DBE/ACDBE/SBE is performing a commercially useful function on that contract.
4. A DBE/ACDBE/SBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE/ACDBE/SBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself. To determine whether a DBE/ACDBE/SBE is performing a commercially useful function, you must evaluate the amount of work subtracted, industry practices, whether the amount the firm is paid under the contract is commensurate with the work it is actually performing and the and DBE/ACDBE/SBE credit claimed for its performance of the work, and of the relevant factors DBE/ACDBE/SBE does not perform a commercially if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to:

a. DISADVANTAGED BUSINESS ENTERPRISE (DBE) FIRMS ONLY

1. To be a regular dealer, the firm 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.
2. A person may be regular dealer in such bulk items as petroleum products, steel cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business; if the person both owns and operates distribution equipment for long-term lease agreement and not on an ad hoc or contract by contract basis.

3. Packagers, brokers, manufacturers' representatives or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
4. With respect to materials or supplies purchased from a DBE/ACDBE/SBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for the delivery of materials or supplies required on a job site, toward DBE/ACDBE/SBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE/ACDBE/SBE goals.

Sixty percent (60%) of the total dollar value will be counted in the case of a DBE/ACDBE supplier that is not a manufacturer, provided that the DBE/ACDBE/SBE supplier performs a commercially useful function in the supply process to include brokers, etc. in accordance with 49 CFR Part 26.55 Paragraph 2b.

b. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) PARTICIPATION ONLY

ACDBE firms can only be counted if they are performing commercially useful function as outlined above. Count revenues generated to an ACDBE concessionaire only if the ACDBE is performing a commercially useful function on that contract.

c. DBE/ACDBE MANUFACTURER/REAL DEALER PARTICIPATION

The entire amount of fees or commissions charged by a DBE/ACDBE/SBE firm for a bona fide service will be counted provided that the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services include, but are not limited to, professional, technical, consultant, legal security systems, advertising, building cleaning and maintenance, computer programming, or a managerial.

One hundred percent (100%) of the cost of goods obtained from a DBE/ACDBE/SBE manufacturer will be counted. The term manufacturer has the same meaning as in Part 26 Section 26.55(1) (ii). One hundred percent (100%) of the cost of goods purchased or leased from a DBE/ACDBE/SBE regular dealer will be counted. The term "regular dealer" has the same meaning as in Part 26 Section 26.55(2) (ii). Credit will be counted toward DBE/ACDBE/SBE goals for goods purchased from a DBE/ACDBE/SBE, which is neither a manufacturer nor a regular dealer as follows:

1. Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the good themselves.
2. Count the entire amount of fees or transportation charges for the delivery of good required for a concession, provided that this amount is reasonable and not excessive as compared with the fees customarily allowed for similar services. Do not count any portion of the cost of the good themselves.

If a firm has not been certified as a DBE/ACDBE/SBE in accordance with the standards in this part, do not count the firm's participation toward DBE/ACDBE/SBE goals.

III. BIDDING REQUIREMENTS, TERMS AND CONDITIONS

A. In addition to any other requirements contained in this Invitation to Bid or Request for Proposal or Qualifications, the following DBE/ACDBE/SBE Program requirements must be satisfied proposals must include a representative that:

1. The Proposer/Bidder/Qualifier has met the goal established by the Airport for this procurement, or
2. The Proposer/Bidder/Qualifier has made a good faith effort to attain the level of DBE/ACDBE/SBE participation sought by the Airport for this procurement.

Each Proposer/Bidder/Qualifier must include a statement in **Enclosure B-1** (Declaration of Proposed DBE/ACDBE/SBE Utilization) of the level of DBE/ACDBE/SBE participation attained through such effort. This submittal is regarded as a matter of bid responsiveness. Failure to make these submittals will serve to disqualify the bid as non-responsive to this Invitation to Bid or Request for Proposal or Qualifications.

B. Each Proposer/Bidder/Qualifier should also prepare a complete DBE/ACDBE/SBE Participation Plan that sets forth the extent of DBE/ACDBE/SBE involvement in this procurement, these materials are to be provided upon request, and will be considered in determining Proposer/Bidder/Qualifier responsibility.

C. DBE/ACDBE/SBE participation plans shall include the following minimum information:

1. DBE/ACDBE/SBE Participation Schedule (**Enclosure B-3**), which includes:
 - a) Names, addresses and contact persons of the DBE/ACDBE entities that will participate in the contract.
 - b) A description of the work each named DBE/ACDBE will perform.
 - c) The dollar amount (projected revenue) of the participation of each named DBE/ACDBE.
 - d) Federal Tax Identification Number.

All proposed and subsequent certified DBE/ACDBE firms must complete **Enclosure B-2** (DBE/ACDBE Affidavit) and **Enclosure B-4A** (Letter of Intent – Certified DBE/ACDBE), and copies of sub-agreements must be submitted for each DBE/ACDBE firms whose participation is proposed for the performance of this contract as a subcontractor/sub-consultant or joint venture.

2. If the DBE/ACDBE and SBE goals are not met, the Proposer/Bidder/Qualifier must demonstrate adequate document in Attachment B-5 (Good Faith Effort Guidelines) the good faith efforts is made to include DBE/ACDBE/SBE participation in the contract. The documentation of the effort is discussed in greater in paragraph E of this section.

3. Non certified DBE/ACDBE and SBE Participation Schedule (**Enclosure B-6**), which includes:
 - a. Names, addresses and contact persons of the DBE/ACDBE and SBE firms that will participate in this contract.
 - b. A description of the work each named non-certified DBE/ACDBE and SBE will perform.
 - c. The dollar amount (projected revenue) of the participation of each named non-certified DBE/ACDBE.
 - d. Federal Tax Identification Number.

All Proposers/Bidders/Qualifiers must make a good faith effort to meet both the DBE/ACDBE and SBE goal(s).

For SBE qualifications and validations, refer to the Small Business Certification Verification Process attached to this Guidelines.

4. All proposed and subsequent non-certified DBE/ACDBE and SBE must complete **Enclosure B-4B** (Letter of Intent-Non Certified DBE/ACDBE and SBE) and copies of sub-agreements must be submitted for each non-certified DBE/ACDBE firms whose participation is proposed for the performance of this contract as a subcontractor/sub-consultant or joint venture.

Note: Firms CANNOT perform as both a DBE/ACDBE and SBE at the same time.

5. All Tier Sub-contractors/consultants Participation Schedule (**Enclosure B-8**), which includes:
 - a. Names, addresses and contact persons of the Tier subcontractor/consultant.
 - a. First Tier subcontractor/consultant with agreement with Tier sub;
 - b. Identifying whether Tier is certified or non-certified DBE/ACDBE;
 - c. Federal Tax Identification Number
 - d. Description of the work each named Tier will perform.
 - e. The dollar amount (projected revenue) of the participation of each named Tier.

All proposed and subsequent Tier subcontractor/consultant must complete the corresponding Enclosures; copies of sub-agreements must be submitted for each Tier subcontractor/consultant whose participation was proposed for the performance of this contract as a subcontractor/sub-consultant or joint venture.

6. Request for emergency addition-conditional approval to utilize a subcontractor/consultant can be submitted by completing **Enclosure B-9** (Emergency Addition-Conditional Approval of Subcontractor/consultant). The Contractor shall make assurances that all subcontractors listed in Enclosure B-9 who are utilized towards the fulfillment of a DBE/ACDBE/SBE goal will be performing a commercially useful function as outlined in 49 CFR Part 26 and 23. If it is discovered that the DBE/ACDBE/SBE is not performing or

has not performed a commercially useful function, the Prime Contractor will immediately notify OCI of its findings.

THE APPROVAL OF THIS FORM IS CONDITIONAL. FINAL APPROVAL WILL NOT BE GRANTED UNTIL ALL OCI A AND B FORMS ARE COMPLETED AND CONTRACTUAL AGREEMENTS ARE SIGNED AND PROVIDED TO OCI WITHIN 5 DAYS OF SIGNATURE. THIS ADDITION MUST BE APPROVED BY THE AIRPORT DIRECTOR AND THE CITY OF CLEVELAND BOARD OF CONTROL.

If this contract is subject to State of Ohio Prevailing Wage or Federal Davis Bacon (Wage and Hour) requirements, the Contractor and sub-contractor are required to follow all contractual obligations related to Wage and Hour on all Department of Control/City of Cleveland contracts. **If the wages and hour information is not submitted, payment to the Contractor can be stopped or the project can be stopped entirely.**

All other provisions regarding additions of subcontractor/consultants shall remain enforced and applied herein; therefore, it must be followed.

7. The following standards shall be applied in assessing the responsibility of the DBE/ACDBE plan submitted:
 - a) Whether the participation plan contains capable currently certified DBE/ACDBE firms.
 - b) Whether the firms listed in the plan are performing commercially useful functions
 - c) Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project
 - d) Whether the plan exhibits a likelihood of goal attainment
 - e) Whether the Prime/Sub relationships are firm, i.e. whether conditional subcontractors have been entered.

- D. The contractor must receive the approval from the Airport's Office of Compliance and Inclusion **before** termination, addition and or making substitution for any subcontractors listed in its DBE/ACDBE/SBE and non-certified DBE/ACDBE/SBE plans.

Airport certified DBE/ACDBE entities are eligible for inclusion in plan. Consult the DBE/ACDBE Directory at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>. The Airport's Office of Compliance and Inclusion is available for assistance in ascertaining certification status of DBEs/ACDBEs. Applications for certification may be obtained at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>. All applications must be made through the Ohio Unified Certification Program (UCP) Application. Firms with SBE designations can be assessed through the OCI Office.

For all bids, firms seeking to be counted toward participation at the time of contract award must be certified prior to the bid/proposal submission date. For all proposals and statements of qualifications, all firms to be counted toward participation at the time of the contract award must be certified by the time of final contract negotiations.

1. The Airport will attempt to certify proposed DBE/ACDBE entities prior to bid. The Airport will also attempt to grant SBE designation prior to bid. **However, it will not consider certification/designation not completed prior to submittal of bids.**

2. DBE/ACDBEs seeking to perform on RFP/Q's must complete the B Forms at the time of proposal/qualification submission. **All B forms for RFP/Q's must be finalized and ALL DBE/ACDBE/SBEs MUST BE CERTIFIED/DESIGNATED BY FINAL NEGOTIATIONS.**

3. Proposer/Bidder/Qualifier should not rely upon the approval of the certification applications submitted for this bid/proposal by its proposed DBE/ACDBEs due to the time it takes to review and approve an application
 4. However, substitution of DBE/ACDBE entities appearing in a plan may be permitted where the Disadvantaged Business Enterprise Liaison Officer (DBELO) determines that such substitution will not result in an abuse of the DBE/ACDBE Program. The burden of demonstrating the propriety of such substitution lies with the Proposer/Bidder/Qualifier seeking substitution. Denial of certification is final for the pending contract. Any person denied certification may appeal such decision in accordance with the provisions of 49 CFR Part 26 Section 28.69, which is reproduced as part of the Joint Certification Application.
 5. The Proposer's/Bidder's/Qualifier's commitment to a specific goal for DBE/ACDBE/SBE utilization as detailed in its DBE/ACDBE/SBE Plan shall constitute a presumption that good faith efforts to meet the DBE/ACDBE/SBE firms have been made. If the Proposer/Bidder/Qualifier fails to meet the goal, it will carry the burden of furnishing sufficient documentation demonstrating its adequate good faith efforts by utilization.
- E. The standard by which the Airport will determine whether the efforts made by a Proposer/Bidder/Qualifier were good faith efforts is whether such efforts could be reasonably be expected to produce sufficient DBE/ACDBE/SBE participation to meet the goals set for this procurement in reaching this decision, the Airport may consider all efforts advance by Proposer/Bidder/Qualifier as well as the following:
1. Did the contractor attend any scheduled pre-solicitation or pre-bid meetings to inform DBE/ACDBE/SBEs of contracting and subcontracting opportunities?
 2. Did the contractor advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
 3. Did the contractor provide written notice to a reasonable number of specific DBE/ACDBE/SBE that their interest in the contract was being solicited, in sufficient time to allow the DBE/ACDBE/SBEs to participate effectively?
 4. Did the contractor/supplier follow up with the DBE/ACDBE/SBE firms interested in participating?
 5. Did the contractor/supplier select portions of work to be done by DBEs/ACDSBEs/SBEs (including dividing contract into economically feasible unit to facilitate participation)?
 6. Did the contractor provide adequate information about plans, specifications, and/or contracting requirements?
 7. Did the contractor negotiate in good faith with interested DBEs/ACDBEs/SBEs not rejecting DBEs/ACDBEs/SBEs as unqualified without sound reasons?
 8. Did the contractor make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
 9. Did the contractor effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc., that have knowledge of available DBE/ACDBE/SBE firms or the names or organizations to locate such firms?

Where OCI determines that GFE is insufficient, the Proposer/Bidder/Qualifier is provided an Administrative Reconsideration within the guidelines of 49 CFR §26.53(d). The Proposer/Bidder/Qualifier must provide written documentation/s or argument/s concerning

efforts to meet the DBE Utilization Goal within five (5) working days of receipt of the notice that GFE was unsatisfactory. The Proposer/Bidder/Qualifier will have the opportunity to meet with the DBE Liaison Officer in person to discuss the issue of whether it met the goal requirements or made adequate good faith efforts of this subsection. The DBE Liaison Officer will render a written decision and provide notification to the Proposer/Bidder/Qualifier that will explain the basis for finding. The finding of the DBE Liaison Officer cannot be appealed to the U.S. DOT.

- F. In the event a contract is awarded as a result of this procurement, the DBE/ACDBE/SBE Participation Plan submitted by the successful Proposer/Bidder/Qualifier and the terms, conditions and requirements contained in this notice shall become an integral part of the contract, binding said Proposer/Bidder/Qualifier to full and faithful performance in accordance with said plan.
- G. Any award resulting from the procurement shall be and is conditioned upon the attainment of the aforesaid goals or the satisfactory showing of good faith efforts to attain said goals.
- H. All successful Proposers/Bidders/Qualifiers must submit all the required documents to project managers prior to OCI final written approval to proceed (i.e. fully executed contract, that includes Purchase Order, Certification Request, Signature page of the contract between successful Proposers/Bidders/Qualifiers with the City of Cleveland, City Ordinance, Board Control Resolution (*all proposed DBEs/ACDBEs/SBEs, Non-Certified DBEs/ACDBEs/SBEs should be listed*), all Subcontract/consultant Agreements, Post Project Summary and Project Contract Summary). Affirmative Action and/or EEO-1 forms are to be submitted to OCI bi-annually.
- I. During the performance of any resulting contract and for a period of up to three (3) years following completion of the contract work, the Airport may initiate reviews for compliance with the requirements of the Airport's DBE/ACDBE/SBE Program and the successful Proposer's/Bidder's/Qualifier's (hereafter "*Contractor*") DBE/ACDBE/SBE Participation Plan. Such reviews will require the submissions of payments or revenue reports using **B2GNow Certification and Compliance Reporting System**, which can be access at <https://cleveland.diversitycompliance.com/Default.asp> and supporting documents (i.e. invoices and cancelled checks) uploaded into the system. Such reviews also require review of monthly statements, desk audits and on-site reviews. Provisions of the Davis Bacon Prevailing Wages and weekly submissions of Certified Payroll Registers (CPR) shall follow the guidelines and requirements of 29 CFR Parts 1,3.5,6,7; United States Code: 40 3241-3144, 3146-36148, Copeland "Anti-Kickback" Act and The Contract Work Hours and Safety Standard Act.

Where a Contractor is found by the Airport to have failed to comply with the requirements of the DBE/ACDBE Program and the SBE Element or the DBE/ACDBE/SBE Participation Plan, the Contractor will be required to take corrective action. If corrective action is not promptly taken by the offending Contractor, the following sanctions may be imposed (singly, in any combination and in addition to any other remedies provided by law or equity):

1. The Airport may withhold and all further payment under the contract.
2. The Contractor may be ordered to stop work.
3. The contract may be terminated for breach.

4. Suspension or debarment proceedings may be commenced in accordance with 49 CFR Part 29.
5. The Director of Purchasing and Supplies may find the defaulting contractor non-responsible in respect to other solicitations for a stated period of time.
6. The relevant performance bond(s) may be enforced.
7. The contract payments may be reduced by an amount equal to that designated in the DBE/ACDBE/SBE plan for DBE/ACDBE/SBE participation.

Reviews for non-federally funded projects (i.e. construction project, professional services projects, requirement projects) will require the submissions of payments or revenue reports using **B2GNow Certification and Compliance Reporting System**, which can be access at <https://cleveland.diversitycompliance.com/Default.asp> and supporting documents (i.e. invoices and cancelled checks) uploaded into the system. Prevailing wages and submissions of weekly Certified Payroll Registers (CPR) to OPICC or the LCPtracker shall follow the guidelines and requirements of the Federal Davis Bacon and Related Acts and the Ohio Revised Code 4115 accordingly.

- J. Upon completion of the project (or portion of the project for partial releases of retainage) or completion of any subcontractor/sub-consultant/sub-concessionaire portion of the project, and upon receipt of all required documentation (including Lien Waivers) and deliverables, the Airport will approve release of retainage of portions thereof directly to the Contractor/Consultant. The Contractor/Consultant shall release retainage due to each subcontractor or material supplier within ten (10) days following Owner's payment to the Contractor/Consultant for work completed or material supplied.
- K. Agreements between a supplier/contractor and DBE/ACDBE/SBE in which the latter promises not to provide subcontracting quotations to other supplier/contractors are prohibited.
- L. The Contractor will keep records and documents for three (3) years following performance of this contract to indicate compliance with this notice. Such records and, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the Airport and will be submitted to Airport upon request with any other compliance information which such representative may require.
- M. If at any time the Department of Transportation or the Airport has reason to believe that any person or firm has willfully or knowingly provided incorrect information or made a false statement, it may refer the matter to the General Counsel of the Department of Transportation. They may initiate debarment proceedings in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as they deem appropriate.
- N. Proposers and Contractors agree to be bound by all the requirements, terms and conditions of this notice.
- O. Nothing in this shall be interpreted to diminish the present contract compliance review.