

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CLAUSES FOR SOLICITATIONS

- A. This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs.
- B. The DBE Goal for this Procurement is included on the Cover Page of this Solicitation.
- C. The VENDOR or subcontractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this Contract. The VENDOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Contract. Failure by the VENDOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the RGRTA deems appropriate which may include but is not limited to:
 - a. Withholding monthly progress payments;
 - b. Assessing Sanctions;
 - c. Liquidated Damages; and/or
 - d. Disqualifying the VENDOR from future bidding as non-responsible: 49 CFR §26.13(b).
- D. Each subcontract the VENDOR signs with a Subcontractor must include the assurance in the above paragraph (see 49 CFR 26.13(b)). After contract award, copies of all subcontracts with DBE firms for Project-related work shall be provided to RGRTA's DBE Liaison Officer (DBELO) via email at DMEMonitoring@myRTS.com
- E. It is the policy of the RGRTA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. The Authority's DBE Program was established to meet the following objectives:
 - a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
 - b. To create a "level playing field" on which DBE's can compete fairly for DOT-assisted contracts;
 - c. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
 - d. To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs;
 - e. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
 - f. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities; and
 - g. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
- F. RGRTA has adopted the New York State Unified Certification Program (NYSUCP) as certification of DBE businesses. New York State DOT maintains a DBE directory identifying all firms eligible to participate as DBEs. The Directory lists the firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE.
 - a. This Directory is available online at the following address: www.nysucp.net.
 - b. The Directory is also available from NYS DOT, at the following address:
 - i. NYS Department of Transportation Office of Equal Opportunity Development & Compliance, 1220 Washington Avenue, Bldg. 4 - G16, Albany, New York 12232, Phone: (518) 457-1129, Fax: (518) 457-9678

1.1. Demonstration of Good-Faith Efforts (GFE)

- A. Those Vendors not able to comply with the DBE Goal established on this Solicitation shall provide evidence of Good-Faith Efforts to comply. Vendor can demonstrate that it has done so either by meeting the contract goal or

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by documenting good-faith efforts. Forms showing documentation of Good-Faith Efforts and instructions for GFE compliance are provided in the Solicitation.

- B. The RGRTA DBELO is responsible for determining whether a Vendor who has not met the DBE goal has documented sufficient good-faith efforts to be regarded as responsive.
- C. The RGRTA DBELO will check the bidder's documentation and ensure that all information is complete, accurate, and adequately documents the Vendor's good-faith efforts before the Authority commits to the execution of the contract with the Vendor. Administrative Reconsideration
 - a. Within seven (7) days of being informed by RGRTA that it is not responsive because it has not documented sufficient good-faith efforts, a bidder/offeror may request Administrative Reconsideration.
 - b. RGRTA has designated the following individual as the RGRTA Reconsideration Official:
 - Chief Financial Officer
 - Rochester Genesee Regional Transportation Authority
 - 1372 East Main Street
 - Rochester, New York 14609
 - (585) 654-0230
 - c. In this capacity, the CFO is responsible for implementing Administrative Reconsideration activities for RGRTA. The CFO's duties are as follows:
 - i. Receive and review written documentation or argument concerning the issue of whether a bidder requesting Administrative Reconsideration has met the contract goal or made good-faith efforts to do so.
 - ii. Hold in-person meetings with vendors requesting Administrative Reconsideration. Allow vendor to discuss the issue of whether it met the contract goal or made good-faith efforts to do so.
 - iii. Provide vendors with a written decision on the reconsideration issue, explaining the basis for the finding that the vendor did/did not meet the goal or make adequate good-faith efforts to do so.
 - iv. Bidder/offerors should address all requests for Administrative Reconsideration in writing to the Reconsideration Official at the above address.
 - v. The Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not document sufficient good-faith efforts.
 - vi. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good-faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the RGRTA Reconsideration Official to discuss the issue of whether it met the goal or made adequate good-faith efforts to do. The result of the reconsideration process cannot be administratively appealed to the Department of Transportation.

1.2. Good-Faith Efforts Following the Termination/Replacement of a DBE on a Contract Having a DBE Goal

- A. RGRTA requires that prime VENDORS not terminate a DBE subcontractor on a contract with a DBE contract goal without RGRTA's prior written consent. Prior notice shall only be provided when there is "good cause" for termination of the DBE firm as established by section 26.53 (f) (3) of the DBE regulation.
- B. Before transmitting to RGRTA its request to terminate, the prime VENDOR must give notice in writing to the DBE of its intent to do so. A copy of this notice must be submitted to RGRTA prior to consideration of the request to terminate. The DBE will have five (5) days to respond and advise RGRTA why it objects to the proposed termination (note: the five-day period may be reduced if the matter is one of public necessity; e.g. safety).

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- C. In those instances where “good cause” exists to terminate a DBE’s contract, the Authority will require a VENDOR to make good-faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The Authority will also require the prime VENDOR to notify the DBE Liaison Officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.
- D. In this situation, the Authority will require the prime VENDOR to obtain prior approval from RGRTA of the substitute DBE, and to provide copies of new or amended subcontracts, or documentation of good-faith efforts. If the VENDOR fails or refuses to comply in the time specified, the RGRTA may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the VENDOR still fails to comply, the contracting officer may issue a termination for default proceeding.
- E. A prime VENDOR may not terminate a DBE subcontractor for convenience and then perform the work of the terminated subcontractor with its own forces or those of an affiliate, without RGRTA’s prior written consent. In accordance with the requirements of Section 26.53 of the Federal Regulations, the RGRTA will require good-faith efforts of the prime VENDOR to find another DBE subcontractor to substitute for the original DBE.
- F. A termination, or any other amendment to the Utilization Plan submitted by the VENDOR, must be approved by RGRTA’s DBE Liaison Officer, including, without limitation, changes in the use of DBE firms or substitutions of DBE firms.

1.3. Prompt Payment

- A. A prime VENDOR shall pay subcontractor for satisfactory performance of their contracts no later than 30 days from receipt of each payment RGRTA makes to the prime VENDOR in accordance with 49 CFR §26.29(a). Further, subcontractor shall pay their subcontractor for satisfactory performance of their contracts no later than 30 days from receipt of each payment the prime VENDOR makes to the subcontractor.
- B. The prime VENDOR further agrees to return retainage payments to each subcontractor within 30 calendar days after the subcontractor’s work is satisfactorily completed. Subcontractors shall pay their subcontractors any held retainage within 30 calendar days after the subcontractor’s work is satisfactorily completed.
- C. Any delay or postponement of payment from the aforementioned timeframes may occur only for good cause following written approval of RGRTA.

1.4. Reporting Requirements

- A. As part of Regulatory Compliance, RGRTA is required to monitor VENDOR and subcontractor payments, employment of staff performing work on the contract, and ownership / leaseholder of equipment used in the performance of this contract. VENDOR and its subcontractors will be required to provide such documentation as RGRTA requires in order to comply with these requirements. Documentation may include, but is not limited to: copies of invoices, payment devices such as cancelled checks or wire transfers, certified payrolls, and equipment ownership documents or lease agreements. RGRTA may require that documentation be provided directly to its staff or to its DBE Monitoring Firm designee. Failure to provide RGRTA with such records shall constitute a breach of VENDOR’S obligations and RGRTA shall have the right, at its discretion, to order the work

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suspended until VENDOR has complied with this provision. Any costs associated with or resulting from a suspension of work due to VENDOR'S failure to comply with this provision shall be VENDOR'S sole responsibility.

1.5. Compliance

- A. VENDOR'S failure to take the affirmative steps listed herein shall constitute a default by the VENDOR of the obligations under the Agreement. In the event of such a default by VENDOR, RGRТА shall be entitled to deduct payment to VENDOR the percentage amount of the Contract which equals VENDOR'S shortfall from the DBE participation goals for this project. Such deductions by RGRТА may begin with the VENDOR'S initial payment application, and will carry-over to subsequent payment applications until the total amount of the deductions equals the amount of the DBE participation goal shortfall. Once the VENDOR fulfills its obligations to the satisfaction of RGRТА's DBE Liaison Officer, payment deductions will be reimbursed to the VENDOR.