

**DOCUMENT 00485**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**CONTRACT REQUIREMENTS**

**PART 1 - DBE PROGRAM**

**1.1 PREFACE**

The Metropolitan Council recognizes its responsibility to eliminate the effects of illegal discrimination. These requirements define the Council's commitment to create and support programs that result in the inclusion of minority-owned, women-owned, and other small, disadvantaged business enterprises in its procurement and contracting activities.

The Council will, in accordance with the authority granted by federal regulations and state statute, act affirmatively to create a "level playing field" for minority-owned, woman-owned, and other small, disadvantaged business enterprises to achieve the goal of equal opportunity.

To help ensure equal opportunity, the Council utilizes small, disadvantaged businesses in the procurement of goods and services, and the award of contracts. The Council sets inclusion goals on construction contracts and on contracts for consultant, professional, or technical services that feature subcontract opportunities. Where feasible, the Council encourages its grant recipients to engage in efforts to solicit and include small, disadvantaged businesses and to report to the Council the results of these efforts. The Council will set benchmarks to track and measure its efforts to include small, disadvantaged businesses across its divisions.

These provisions outline the bidder's requirements to comply with U.S. Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program and the standards set forth in 49 CFR Part 26. The Council adheres to the Federal DBE Regulations and adopts these provisions for the Metropolitan Council's Environmental Protection Agency (EPA) DBE Program, and the Metropolitan Council Underutilized Business (MCUB) Program.

**1.2 DEFINITIONS**

1. **Day** is defined in Metropolitan Council 00700 General Conditions.
2. **Disadvantaged Business Enterprise (DBE)** has the meaning given in 49 C.F.R. 26.5. DBEs are certified by the Minnesota Unified Certification Program.
3. **Minnesota Unified Certification Program (MNUCP)** means the group of state and local agencies who work together to certify DBEs (as mandated by USDOT). MNUCP is comprised of the following certifying agencies: City of Minneapolis, Metropolitan Airports Commission, Minnesota Department of Transportation, and Metropolitan Council.

**1.3 CONTACT INFORMATION**

Questions regarding the DBE Program and these procedures should be directed to the DBE Liaison Officer, or designee, at the Office of Civil Rights and Small Business Programs

Disadvantaged Business Enterprise (DBE) Contract Requirements

## **PART 2 – CONTRACT GOAL**

### **2.1 DBE PARTICIPATION GOAL**

1. The DBE participation goal for this contract is \_\_\_\_%.
2. For purposes of award, the bidder must either:
  - a) Provide documentation with its bid of DBE participation to meet or exceed the goal on the total bid, or if the bid consists of a base bid and allowances, alternatives, or additives, the base bid, or;
  - b) Provide documentation with its bid that demonstrates adequate good faith efforts (GFE) to meet the DBE goal.
3. After award, the bidder has a continuing obligation to make good faith efforts to meet the goal and, will be responsible for applying the DBE participation goal to the total contract amount including any alternatives, additives, contract modifications and change orders.

## **PART 3 - BID SUBMITTAL**

### **3.1 AT TIME OF BID**

All bids MUST include a properly completed:

1. **00485 - Disadvantaged Business Enterprise (DBE) Commitment Form** (DBE Commitment Form); and
2. **00485 - Disadvantaged Business Enterprise (DBE) Letter of Intent** (DBE Letter of Intent Form)

In addition:

If applicable, all bids MUST include DBE Good Faith Efforts

3. **00485 - Disadvantaged Business Enterprise (DBE) Good Faith Efforts Submission Reference**

- a. If the Bidder's DBE participation commitment is less than the goal established for this contract, the Bidder must submit documented Good Faith Efforts with its bid that provides information about efforts the bidder took to meet the goal.

**Failure to submit a properly completed DBE Commitment Form, DBE Letter of Intent Form(s), or DBE Good Faith Efforts (if applicable) with the bid may be considered nonresponsive and result in no further consideration. The Council will not entertain requests to waive the requirements to meet the goal or submit good faith efforts.**

**\*Exception When a DBE is bidding as a Prime, the DBE firm does not need to submit a Letter of Intent for the work they will self-perform. However, they do need to submit a Letter of Intent for all other DBE firms performing on the contract.**

### **3.2 DBE COMMITMENT FORM (due at the time of bid)**

A DBE Commitment Form is required at the time of bid.

1. The DBE Commitment Form must be completed and signed by the Bidder.
2. The Bidder must list all DBE firms, if any, whose participation is proposed to be credited toward meeting the DBE goal. A DBE Commitment Form will not be considered complete unless it includes the following information for each DBE firm:
  - a. The name of each DBE that the Bidder intends to credit toward the DBE goal;
  - b. A description of the work to be performed or materials to be supplied by each DBE;
  - c. The DBE bid amount;
  - d. A description of how each DBE firm will participate in this contract. The DBE goal may be satisfied by a commitment to DBE participation on the contract as a prime contractor, joint venture partner, subcontractor, trucker, manufacturer, supplier, distributor, or broker; and
  - e. The dollar value of each DBE's participation/ DBE credit on the contract.
3. On the DBE Commitment form, the Bidder should also include:
  - a. The total value of all DBE participation; and
  - b. The total percent of all DBE participation relative to the bid amount
4. All DBE firms which are listed on the DBE Commitment Form must, at time of bid, be listed in the DBE directory. The DBE directory can be found at: <https://mnucp.metc.state.mn.us/>.

### **3.3 DBE LETTER OF INTENT FORM (due at the time of bid)**

At time of bid, you must provide a completed and signed letter of intent for each DBE firm listed on the DBE Commitment Form as being utilized for credit to meet the goal. If you fail to include a completed Letter of Intent Form signed by the DBE, that DBE's participation will not be counted towards the DBE goal. Failure to include any of the other information required by this section may result in the DBE's participation not being counted towards the DBE goal.

1. The DBE Letter of Intent Form must be completed and signed by the Bidder and DBE representative. For each DBE listed as a regular dealer or distributor the Council will make a preliminary counting determination to assess the DBE's eligibility for 60 or 40 percent

credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in [49 CFR section 26.55\(e\)\(2\)\(iv\)\(A\), \(B\), and \(C\)](#) and [\(e\)\(3\)](#) under the contract at issue. The Council's preliminary determination will be made based on the DBE's written responses to relevant questions, listed on the Intent Form, and the DBE's affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. If the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, the Council is required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal. For a DBE listed to perform trucking/hauling, the DBE must complete the questions on the Letter of Intent form applicable to truckers/haulers so the Council can accurately determine the DBE eligibility for credit.

2. The DBE Letter of Intent Form must include the following information:
  - a. A selection of how each DBE firm will participate in this contract;
  - b. A description of the work to be performed or materials to be supplied by each DBE;
  - c. The DBE bid amount;
  - d. The dollar value of each DBE's participation on the contract; and
3. The DBE Letter of Intent must confirm the description of work and dollar value of participation as listed on the DBE Commitment Form. In addition, for regular dealers or distributors, the questions on the Letter of Intent form must be answered by the DBE so the Council can make a preliminary decision on the DBE eligibility for 60 or 40 percent credit of the cost of materials and supplies. For trucking/hauling, the DBE must complete the questions on the Letter of Intent form applicable to truckers/haulers so the Council can accurately determine the DBE eligibility for credit.

### **3.4 DBE GOOD FAITH EFFORTS REQUIREMENT (due at the time of bid)**

Award of this contract is conditioned on meeting the requirements of 49 C.F.R. Section 26.53, requiring Bidders to make good faith efforts to meet the DBE participation goal specified in Section 2.1 of this document. The Council will make sure all information is complete and accurate and adequately documents the Bidder's good faith efforts prior to any award of a contract. A Bidder's plan to self-perform 100% of the work does not satisfy the requirement to demonstrate Good Faith Efforts.

Bidders are required to demonstrate good faith efforts to meet the goal by either:

1. Documenting the participation commitment of specific DBEs to meet the DBE participation goal, or

2. Documenting adequate good faith efforts taken to meet the goal, if the DBE participation goal is not met.

For purposes of award, DBE participation to meet or exceed the goal will be calculated on the total bid, or if the bid consists of a base bid and allowances, alternatives, or additives, the base bid. After award, the Bidder has a continuing obligation to make good faith efforts to meet the goal and, will be responsible for applying the DBE participation goal to the total contract amount including any additives, contract modifications and change orders.

If the information provided in the DBE Commitment Form, submitted with the bid, indicates that the committed DBE participation is less than the DBE participation goal established for this contract, the Bidder must provide documentation with the bid regarding the Bidder's good faith efforts to meet the DBE participation goal taken prior to the bid deadline. (See Section 4.1)

The Bidder is responsible for the accurate calculation of the DBE participation and properly completing the required forms. If the Bidder miscalculates the DBE participation or the Bidder's participation is lowered due to failure to properly complete the required forms, the Council will determine if the proper calculation lowers the Bidder's DBE participation commitment below the DBE participation goal. If the Bidder does not meet the DBE participation goal, and the Bidder does not submit DBE Good Faith Efforts with its bid, it's bid will be rejected as non-responsive. The Council will not accept DBE Good Faith Efforts the Bidder submits after the bid deadline. For this reason, Bidders may wish to submit Good Faith Efforts even if they have calculated that they meet the goal.

All DBE Good Faith Efforts to achieve the DBE goal must be accomplished by the bid deadline and submitted with the bid. The Council will not consider DBE Good Faith Efforts carried out after the bid deadline or Good Faith Efforts materials submitted after the bid deadline.

## **PART 4 - PRE-AWARD**

### **4.1 GOOD FAITH EFFORTS DETERMINATION**

In accordance with 49 C.F.R. Section 26.53 and Appendix A to Part 26, the following guidelines will apply to a good faith efforts determination.

The Bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. (See Section 3.4 and 00485 – DBE Good Faith Efforts Form.)

All Good Faith Efforts to achieve the DBE participation goal must be completed by the bid deadline and the documentation must be submitted with the bid.

The Bidder must submit copies of each DBE and non-DBE subcontractor quote submitted to the Bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. The Council will review whether the DBE prices were substantially higher and contact the

DBEs listed to inquire as to whether the DBEs were contacted by the Bidder. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the regulation.

1. The Council's DBE Liaison Officer, or designee, will determine whether a Bidder made sufficient Good Faith Efforts to meet the goal in accordance with the guidelines set forth in 49 C.F.R. Section 26.53, and Appendix A to Part 26. Compliance will be determined on a case-by-case basis based on a review of documentation including a review of the following types of activities. The following is not an exclusive or exhaustive list, and other factors, or types of efforts, may be relevant in appropriate cases.
  - a. 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 meetings and events, advertising or written notices, posting of Notices of Sources Sought or Requests for Quote, written notices, or emails to all DBEs listed in the MNUCP DBE Directory of 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. The Bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation. The Bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - b. 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 to facilitate DBE participation, even when the Bidder 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.
  - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
  - d. Negotiating in good faith with interested DBEs. The Bidder has the responsibility to make a portion of the work available to DBE subcontractors and suppliers and to 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 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.
    - i. A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and

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

- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate bases for the rejection or non-solicitation of bids in the Bidder's efforts to meet the contract 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 Bidder to accept unreasonable quotes in order to satisfy contract goals.
- f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required for this contract.
- g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- i. The performance of other Bidders in meeting the contract goal. For example, when the apparent successful Bidder fails to meet the contract goal, but others meet it, the Council may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful Bidder could have met the goal. If the apparent successful Bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other Bidders, the Council may view this, in conjunction with other factors, as evidence of the apparent successful Bidder having made good faith efforts.
- j. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts except in design-build procurement.

## 4.2 ADMINISTRATIVE RECONSIDERATION PROCESS

The Council's DBE Liaison Officer, or designee, will determine whether a Bidder met the numeric goal or made adequate good faith efforts to meet the DBE participation goal assigned. If the Council's DBE Liaison Officer, or designee, determines that the apparent successful Bidder has failed to meet the goal and did not make adequate good faith efforts, it will, at the Bidder's request, provide the Bidder an opportunity for an administrative review by Council employees who were not involved in the determination. This administrative reconsideration process gives the Bidder 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 may not use this opportunity to challenge the Council's decision to assign a goal to the contract or to request a waiver of the DBE requirements. Any administrative reconsideration will occur before contract award and will be based on good faith efforts submitted with the bid.

### 1. Administrative Reconsideration Request

The Contract Administrator will send the Bidder a letter notifying the Bidder of OCRSB's determination that the Bidder did not meet the numeric participation goal and did not make adequate good faith efforts and will provide the Bidder the option to request an administrative reconsideration of the decision.

The letter will include OCRSB's basis for the decision and all material considered in making the determination pertaining to the Bidder's good faith efforts.

- a. The Bidder must, within five business days, make a written request to the DBE Liaison Officer, or designee, for an administrative reconsideration.
- b. Once a written request has been received, the DBE Liaison Officer, or designee, will contact the Bidder to discuss the reconsideration process. The Bidder will confirm or withdraw its request for reconsideration and will indicate whether it is requesting a paper review or a hearing. The DBE Liaison Officer, or designee, will ask the Bidder to designate a contact person for purposes of the reconsideration process and will obtain the contact information for that person.

A designated OCRSB staff member will coordinate the logistics of the administrative reconsideration process. If the Bidder has requested a paper review, the OCRSB staff member

will send a letter to the Bidder and the reconsideration panel establishing deadlines for submission of written arguments. If the Bidder has requested a hearing, the OCRSB staff member will schedule the hearing with at least 7 days advance notice and within 30 days of the Bidder's written request. The administrative reconsideration hearing will be conducted in person or virtually. In person hearings will take place at the Metropolitan Council located at 390 Robert Street N., St. Paul, MN 55101.

*Note: The Bidder must indicate if it will be represented by legal counsel at the administrative reconsideration hearing. If the Bidder indicates that it will be represented by legal counsel, OCRSB may choose to have legal counsel present at the administrative reconsideration hearing. The Panel members may have separate legal counsel present at the hearing regardless of whether the Bidder is represented by legal counsel.*

## 2. Administrative Reconsideration Panel

- a. The Administrative Reconsideration hearing panel will consist of three Metropolitan Council staff, including a Chair and two panel members, who did not take part in the original determination that the Bidder failed to meet the participation goal or to make adequate good faith efforts. To avoid conflicts, the panel members will not participate in a paper review or hearing for a bid for their respective department.
- b. If on the day of the hearing a panel member is unable to attend, the hearing will proceed with two members. If the Chair is unable to attend, the Chair will designate one of the two remaining panel members as acting chair. If the remaining two panel members disagree on the outcome, the final decision will be made by the Chair or acting Chair.

## 3. Administrative Reconsideration Paper Review Process

- a. Once a paper review has been confirmed, OCRSB staff will confirm the panel and set up a date and time for the panel to convene to review the documentation submitted by the Bidder and OCRSB. The review will be scheduled with at least 7 days advance notice to the Bidder and within 30 days of the Bidder's written request.
- b. The panel may choose to conduct the review in person, at a location that works for the panel, or virtually. If the panel would like to meet in person, OCRSB staff will secure a conference room for the review to take place.
- c. OCRSB will send a confirmation email to the Bidder and the Panel confirming the date of the paper review. OCRSB staff will attach the OCRSB Determination Report to the email. The email will provide notice that Bidder must submit its written documentation or argument no later than five business days before the date of the review and that the documents will be forwarded to the panel upon receipt. All written documentation or argument should be submitted as Adobe pdfs. Bidders should note that the panel is not permitted to consider documentation of good faith efforts made after the submission of the bid or documentation of good faith efforts made before the submission of the bid that was not submitted with the bid. Any information submitted that was not part of the bid or submitted with the bid will be returned to the Bidder and not presented to or considered by the Panel.
- d. Upon receipt of the Bidder's written documentation or argument, OCRSB staff will provide an electronic copy to the Reconsideration Chair, two reconsideration panel members, DBE Liaison Officer and/or designee, OCRSB Specialist, Attorneys advising

OCRSB and the Panel, except for any information excluded as required by paragraph 3.c. above.

- e. The Panel will meet on the scheduled date to review the relevant documentation and arguments, deliberate, and make a decision. The Chair may schedule a follow-up meeting for the Panel to discuss a draft decision. The Chair will distribute a draft to other Panel members for comment before finalizing the decision. The reconsideration panel will consider in its determination only the information presented about the Bidder's actions, documentation, and efforts that occurred prior to the submission of the bid and that were submitted with the bid.
  - f. The Panel Chair will write the decision and submit the signed, written decision to the Contract Administrator (Chief Procurement Officer) for final formatting and distribution within six calendar days after the review. The Chair will copy the Program Technical Specialist for the Chief Procurement Officer when submitting the decision.
  - g. Within seven calendar days after the date of the paper review, the Contract Administrator (Chief Procurement Officer) will send OCRSB, the Bidder and the panel members the written decision. The written decision will explain the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so.
  - h. The decision of the reconsideration panel is the final decision of the Metropolitan Council.
4. Administrative Reconsideration Hearing Process

During the administrative reconsideration hearing, OCRSB staff and the Bidder will have an opportunity to make a persuasive presentation to a neutral panel. The reconsideration panel will base its determination only on the information presented about the Bidder's actions, documentation, and efforts that occurred prior to the submission of the bid and that were submitted with the bid.

#### Prehearing Procedures

- a. Once a hearing date and time has been confirmed, OCRSB staff will send a calendar invite to the Bidder and the Bidder's representatives, panel members, court reporter, DBE Liaison Officer and/or designee, SBU Manager, SBU Specialist, Attorney advising OCRSB (if applicable), and the Attorney advising the panel. If the meeting is being conducted virtually, the calendar invite will include instructions for accessing the

hearing. If the hearing will be conducted in person, OCRSB staff will secure a conference room (4 hours) for the hearing to take place.

- b. OCRSB staff will send a confirmation email to the Bidder that contains details regarding the reconsideration process and procedure.
- c. The Bidder must submit a copy of any written documentation or argument to the DBE Liaison Officer, or designee, no later than 5:00 PM, five business days before the hearing date. Bidders should note that the panel is not permitted to consider documentation of good faith efforts made after the submission of the bid or documentation of good faith efforts made before the submission of the bid that was not submitted with the bid. Any such documentation or argument that is submitted will be returned to the Bidder and not provided to the Panel.
- d. OCRSB may also submit written arguments to the panel members and Bidder no later than 5:00 PM five business days before the hearing date.

*Note: All documentation must be submitted in pdf format via email to the DBE Liaison Officer or designee.*

- e. OCRSB staff will email OCRSB's Evaluation Determination Report to the panel members and Council attorney(s) (if applicable). The email will provide notice that the Bidder must submit any written documentation or arguments no later than five business days before the hearing date and that the documents will be forwarded to the panel upon receipt.
- f. Upon receipt of the Bidder's written documentation or argument, OCRSB staff will provide an electronic copy to the Reconsideration Chair, two reconsideration panel members, DBE Liaison Officer and/or designee, OCRSB Specialist, Court Reporter, and Attorneys advising OCRSB and the Panel, except for any information, documentation or argument that is excluded as required by paragraph 4.c above.

### Hearing Process

- a. On the day of the hearing, for in-person hearings, OCRSB staff will ensure the conference room is ready, recording device is provided to the panel chair, and sign-in sheet is provided.
- b. In the case of a virtual hearing, once OCRSB staff starts the meeting, they should prep the meeting as follows:
  - 1) Check the "Mute on Entry"
  - 2) Uncheck the "Entry and Exit Tone"
  - 3) Once all meeting attendees are present, OCRSB staff will take a screen shot of the participants list, which serves as the official sign-in sheet. This list will later be sent to the Court Reporter and the Reconsideration Panel.

- c. The Chair will open the hearing with introductions of all in attendance, explain the purpose of the reconsideration hearing, and outline the order for the hearing.

*Note: In the case of a virtual meeting, the Chair will start the hearing with introductions and then review best practices for conducting the meeting virtually:*

- a) All attendees will enter the meeting automatically muted.*
  - b) The meeting will be recorded through the virtual platform.*
  - c) A verbal role call will be conducted at the beginning of the meeting for introductions of all attendees, including Panel members, presenters and others.*
  - d) Attendees are to use the “raise hand” button if they wish to speak, and the meeting host will then unmute them.*
  - e) The Panel Chair will lead the meeting and call on attendees to recognize their turn to speak. Each time when speaking, people should say their names for both the recording and the Court Reporter.*
  - f) Panelists should keep their videos on during the hearing. When possible, presenters should turn on their videos while presenting. Other attendees should keep their videos off and remain muted when not speaking or presenting.*
- d. The court reporter introduces self and asks clarifying questions throughout the hearing to capture an accurate record of the reconsideration hearing.
  - e. Each party will be given 30 minutes to present their persuasive arguments. OCRSB staff will present first. Bidder will present second. Each party will have 5 minutes to respond after the Bidder has completed its presentation (if necessary). This will not be a cross examination and the parties may not ask questions of the other party.
  - f. The panel members may ask questions of each party during the presentations or at the conclusion of both of their presentations.
  - g. The Panel Chair will state when the reconsideration hearing has concluded. All parties, excluding the panel members, will exit the hearing room (or log off the virtual meeting, whichever is applicable). OCRSB staff will stop recording the hearing after the parties have left the hearing. The panel and its attorney may remain to participate in the post-hearing discussion.

#### Panel Post Hearing Process

- a. Panel members will meet immediately after the reconsideration hearing to deliberate and make a decision. The Chair will draft the written decision. The Chair may schedule a follow-up meeting for the Panel to discuss a draft decision. The Chair may listen to the recording or review the transcript of the hearing when drafting a decision. The Chair

will distribute a draft to other Panel members for comment before finalizing the decision.

- b. The Chair will submit the signed, written decision to the Contract Administrator (Chief Procurement Officer) for final formatting and distribution within six calendar days after the hearing. The Chair will copy the Program Technical Specialist for the Chief Procurement Officer when submitting the decision.
- c. Within seven calendar days after the date of the reconsideration hearing, the Contract Administrator (Chief Procurement Officer) will send OCRSB, the Bidder and the panel members the written decision. The written decision will explain the basis for finding that the Bidder did or did not meet the goal or make adequate good faith efforts to do so.
- d. The decision of the reconsideration panel is the final decision of the Metropolitan Council.

## **4.3 COUNTING DBE PARTICIPATION**

### **1. COUNTING DBE PARTICIPATION – GENERAL**

In accordance with 49 CFR Section 26.55, the Council will count work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers. The Council will utilize the following guidelines in determining the percentage of DBE participation that will be counted toward the overall DBE goal:

- a. If a firm is not certified as a DBE before the due date for bids the firm's participation will not be counted toward any DBE goals.
- b. DBE participation will not count toward a contractor's final compliance with its DBE commitment on a contract until the amount has been paid to the DBE.
- c. When a DBE participates in a contract, the value of the work performed will be counted as follows:
  - i. The entire amount of that portion of a construction contract (or other contract not covered by paragraph 4.3.1 (c)(ii) below or by 49 CFR Part 26.55(a)(2) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies, and equipment the DBE subcontractor purchases or leases from the Contractor or its affiliate).

- ii. The entire amount of fees or commissions charged by a DBE 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 USDOT-assisted contract, toward DBE goals, provided that the Council determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - iii. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goals.
- d. When a DBE performs as a participant in a joint venture, the Council will count toward the DBE goals a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
- e. The Council will count expenditures to a DBE subcontractor toward DBE goals only if the DBE is performing a commercially useful function on that contract:
  - i. A DBE 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 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 (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the Council will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, and the DBE credit claimed for its performance of the work, and other relevant factors.
  - ii. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Council will examine similar transactions, particularly those in which DBEs do not participate.
  - iii. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected within normal industry practice for the type of work involved, the Council will presume that it is not performing a commercially useful function.

- iv. When a DBE is presumed not to be performing a commercially useful function as provided in this program, the DBE may present evidence to rebut this presumption. The Council may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - v. The Council's decisions on matters of whether a DBE performs a commercially useful function are subject to review by the concerned operating administration (FTA), but not subject to an administrative appeal to USDOT.
- f. The Council will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- i. The Council will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer. For purposes of this paragraph, a manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
  - ii. The Council will count 60% of the cost of the materials or supplies (including transportation costs) toward the DBE goal if the materials or supplies are purchased from a DBE regular dealer. For purposes of this section, a regular dealer is a firm that owns (or leases) and operates, 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 the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.
    - a) Items kept and regularly sold by the DBE are of the "general character" when they share the same material characteristics and application as the items specified by the contract.
    - b) To be a regular dealer, the firm must be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's

inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

- c) A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business as provided in [paragraph \(f\)\(ii\)](#) of this section if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.
  - d) A DBE supplier of items that are not typically stocked due to their unique characteristics (*e.g.*, limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per [paragraph \(f\)\(ii\)\(c\)](#) of this section. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.
  - e) Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers within the meaning of [paragraph \(f\)\(ii\)](#) of this section.
- iii. The Council will count 40% of the cost of the materials or supplies (including transportation costs) toward the DBE goal if the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question. For purposes of this section, a DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract.
- a) A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (*e.g.*, a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance.
  - b) A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor.
  - c) If (iii)(a and b) are met, DBE distributors may receive 40 percent for drop-shipped items.

- d) Terms that transfer liability to the distributor at the delivery destination (*e.g.*, FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.
- iv. With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, the Council will count the entire amount of fees or commissions charged that it deems to be reasonable, including transportation charges for the delivery of materials or supplies. The Council will not count any portion of the cost of the materials and supplies themselves.
- v. The Council will determine the amount of credit awarded to a firm for the provisions of materials and supplies (*e.g.*, whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.

## **2. COUNTING DBE PARTICIPATION – TRUCKING**

- a. DBE trucking companies must perform a commercially useful function to receive DBE credit for the trucking services they perform on a contract. To perform a commercially useful function, a DBE trucking company must:
  - i. Be responsible for the management and supervision of the entire trucking operation for which it is responsible for on the contract, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
  - ii. Own and operate at least one fully licensed, insured, and operational truck used on its contract.
- b. The Council will award DBE credit to a DBE for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- c. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- d. The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

- e. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- f. For the purposes of paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

## **PART 5 - POST AWARD**

### **5.1 DBE REMOVAL/REPLACEMENT PROCESS**

1. Prime contractors cannot remove a DBE or any portion of its work (or an approved substitute DBE) without prior written permission from the OCRSB unless the Council causes the termination or reduction.
2. A removal includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
  - a. The prime contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the Council's written consent prior to a removal; and
  - b. If OCRSB's written consent is not provided prior to a removal of a DBE, the prime contractor is not entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
3. The Council will provide such written consent only if it agrees that the prime contractor has good cause to terminate the listed DBE or any portion of its work (or an approved substitute DBE) For purposes of this section, good cause includes the following circumstances:
  - a. The listed DBE subcontractor fails or refuses to execute a written contract;
  - b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

- c. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
  - d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to [2 CFR parts 180, 215, and 1200](#) or applicable State law;
  - f. You have determined that the listed DBE subcontractor is not a responsible contractor;
  - g. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
  - h. The listed DBE is ineligible to receive DBE credit for the type of work required;
  - i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
  - j. Other documented good cause that you determine compels the termination of the DBE subcontractor.
4. Before a prime contractor submits its request for removal, it must give in writing to the DBE subcontractor, with a copy sent to OCRSB at the same time, of its intent to request to remove and the reason for the proposed request. The prime contractor's written notice must give the DBE 5 days to provide a response, if any, why it objects to the proposed termination of its subcontract/or portion thereof and why the Council should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (*e.g.*, safety), the Council may provide a response period shorter than 5 days.
  5. OCRSB staff will review the request for removal and confirm the circumstances with the Council Authorized Representative (CAR), DBE, and all parties involved. If approved, OCRSB staff will provide written consent to the prime contractor.
  6. OCRSB will require that when a DBE subcontractor or any portion of its work is terminated by the prime contractor as provided in of this section, or the DBE fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. Good faith efforts must be documented by the prime contractor. If the Council requests documentation under this part, the prime contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the

prime contractor, and the Council will provide a written determination to the prime contractor stating whether or not good faith efforts have been demonstrated.

7. The prime contractor awarded the contract, upon request, must make available a copy of all DBE subcontracts. The prime contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and those of all lower tier subcontractors be performed in accordance with the provisions of this part.
8. Failure by the prime contractor to carry out the requirements of the DBE Program or the requirements of 49 CFR part 26, is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in 49 CFR 26.13 (b), including but not limited to:
  - a. Withholding monthly progress payments;
  - b. Assessing sanctions;
  - c. liquidated damages; and/or
  - d. Disqualifying the contractor from future bidding as non-responsible. ..

## **5.2 RACE AND GENDER NEUTRAL DBE PARTICIPATION**

If the contract does not have a specific numerical DBE participation goal, the bidder will be required to document DBE participation obtained or added to their contract after award by submitting a letter of intent form.

## **5.3 ELECTRONIC REPORTING REQUIREMENTS**

The awarded Bidder is required to enter monthly DBE invoice and payment amounts into the Council's online Contract Management System (CMS). The CMS can be found in at: <https://dbecms.metc.state.mn.us/Account/Login?ReturnUrl=%2Fdefault.aspx>

Upon award of a contract, OCRSB staff will work with the awarded Contractor to get a CMS user account, if needed, and provide the Contractor a CMS User Manual detailing the following guidelines:

1. The required data for all DBE subcontractors to be used on the project, must be entered into CMS prior to the construction start date.
2. All DBE billings, submitted during the reporting period, must be finalized, and entered into the CMS prior to submission of Contractor's payment application.
  - a. If there is no DBE billing during the reporting period, the Contractor must enter that into CMS under the appropriate pay application by checking the box for no billing/payment this period.
  - b. Contractor must update Total Billed Amount on home screen of CMS when there are no DBE billings to report.

- c. Any changes to the DBE subcontractor list or their contract amounts must be reported through CMS monthly. Changes include:
  - i. DBE firms removed from the project;
  - ii. DBE firms added to the project;
  - iii. Increases/Reductions to DBE contract amounts;
  - iv. Credit adjustments; and
  - v. DBE Contact information.
- d. All payments made to DBE firms must be finalized and entered within 10 days of receipt of payment from the Council. DBE payments, and required data fields, must be entered into CMS.
- e. Failure to submit this report in a timely manner will result in a penalty of \$10 per late day per report and may also result in the imposition of Administrative Sanctions under section FTA-14.7, pursuant to COUNCIL's DBE policy and USDOT regulations. For the purposes of section FTA-14.5, timely submittal means receipt in the contract compliance function of the COUNCIL's Office of Civil Rights and Small Business Programs by the close of business on the fifteenth (15th) of the following month
- f. Failure to comply with the provisions of this section, may result in the COUNCIL finding the CONTRACTOR in noncompliance with the DBE provision of this contract and may result in imposition of Administrative Sanctions as described in section FTA-14.7 of document 00710 or document 00711, whichever is applicable.

**00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT FORM**

**(Must be completed, signed, and submitted with each bid)**

Bidder Name	Project Name				DBE Goal
<b>DBE Name</b> <small>(Legal business name used for certification)</small>	<b>Description of Work/Materials Being Supplied</b>	<b>Participating As?</b> <i>Prime, Subcontractor, Supplier, Distributor, Broker, or Trucking Firm</i>	<b>DBE Bid Amount</b>	<b>DBE Credit amount</b> <i>dollar value</i>	<b>DBE %</b>
For purposes of award, bidder must demonstrate good faith efforts to meet the goal on the total bid or the base bid if the bid consists of base bid and allowances and or additives. Use copies of this form if additional space is needed to list committed DBEs.				<b>Total Value</b>	<b>Total %</b>

**Were any non-DBE subcontractors selected over DBE subcontractors (check one)**      YES       NO   
(If you select "yes" or do not check a box and you do not meet the numeric goal, you must provide the quotes required by Section 4.1 in the 00485 – DBE Contract Requirements)

**I have read the DBE requirements in Document 00485 Disadvantaged Business Enterprise (DBE) Contract Requirements. I further certify that the Bidder has made appropriate efforts to comply with the DBE requirements for this contract by making good faith efforts to meet the assigned DBE goal as specified in 00485 Disadvantaged Business Enterprise (DBE) Contract Requirements. I am authorized on behalf of the Bidder to submit this certification to the Council. This certification is a material representation of fact on which the Council may rely in awarding the contract.**

Bidder Name / Title / Phone: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Bidder Signature: \_\_\_\_\_ Date: \_\_\_\_\_

# 00485 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) LETTER OF INTENT

**All Prime Contractors must submit a completed LETTER OF INTENT for each DBE Subcontractor listed in the DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT FORM.**

If a DBE firm is bidding as the prime contractor, a Letter of Intent is not required for the work they will self-perform. However, a Letter of Intent is required for any additional DBE subcontractors on the contract.

## Section A: TO BE COMPLETED BY BIDDER

<b>Bidder:</b>	
<b>Contract #:</b>	
<b>Project Name:</b>	

<b>DBE Firm:</b>			
<b>Address:</b>			
<b>City:</b>		<b>DBE Contact Person:</b>	
<b>State:</b>		<b>DBE Contact Phone:</b>	
<b>Zip:</b>		<b>DBE Contact Email:</b>	

## Section B: TO BE COMPLETED BY DBE FIRM

### DBE performing as:

- Subcontractor (100% credit)
  Manufacturer (100% credit)

*\*If a Supplier/Distributor/Broker, DBE **MUST** complete and sign the Regular Dealer-Distributor Affirmation Form (Attached). Failure to submit the attached form for a DBE material supplier may result in the bid being non-responsive.*

- Supplier (60% credit)
  Distributor (40% credit)
  Broker (fees/commissions % credit)
- Trucking (complete Section C)

NAICS Code(s) & Scope(s) of Work <i>(if supplying materials, indicate materials being supplied)</i>	DBE Bid Amount \$	Dollar Amount

## Section C: TO BE COMPLETED ONLY BY DBE TRUCKING FIRMS AND MATERIAL HAULERS

- How many total trucks will be used on this project? \_\_\_\_\_
- Of the total listed above, how many ITOs will be used on this project? \_\_\_\_\_
- Of the Total ITOs listed above, how many DBE ITOs will be used on this project? \_\_\_\_\_

Name of DBE ITOs (add a list if necessary)		Dollar Amount of Contract/Agreement	Number of Dump Trucks, Tractors/Trailers (specify)
1.			
2.			
3.			
4.			

**Section D: TO BE COMPLETED BY BIDDER AND DBE FIRM**

1. This is a letter of intent between the bidder on this project and a DBE firm to perform subcontract work on this contract upon award.
2. By signing below, the bidder is committing to utilize the above-named DBE to perform the work described above if award on the project.
3. By signing below, the above-named DBE confirms it is certified under the Minnesota Unified Certification Program (MNUCP) and is committing to perform the work described above.

Affirmation: I hereby affirm that the information above is true and correct.

X  
Bidder Representative Signature

X  
DBE Representative Signature

\_\_\_\_\_  
Bidder Representative Name

\_\_\_\_\_  
DBE Representative Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**DBE Regular Dealer/Distributor  
Affirmation Form**

Bidder Name:

U.S. Department of  
Transportation

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will **all** items sold or leased be provided from the on-hand inventory at your establishment? **YES** **NO**

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? **YES** **NO** (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

**YES** **NO\*** (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

\*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

**YES** **NO<sup>1</sup>**

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

<sup>1</sup> If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? **YES<sup>2</sup>** **NO<sup>3</sup>**

- a) Will you be using sources **other than** the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? **YES<sup>2</sup>** **NO<sup>3</sup>**

<sup>2</sup> If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased **may** be counted at 40%.

<sup>3</sup> If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

**Printed Name and Signature of DBE Owner/Authorized Representative:**

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

**Printed Name and Signature of Bidder's Authorized Representative:**