



State of Rhode Island  
Department of Administration / Division of Purchases  
One Capitol Hill, Providence, Rhode Island 02908-5855  
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**ADDENDUM #1**

**RFP # 7594582      TITLE: STATEWIDE SHORT-TERM TRAFFIC COUNTING SERVICES**

**SUBMISSION DEADLINE:      JULY 9, 2018 – 11:30 A.M.**

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This addendum consists of the following:

1. Required forms inadvertently omitted.
2. Cost Proposal Form inadvertently omitted.

*Lisa Hill*

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Lisa Hill  
Assistant Administrator



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
RIDOT Addendum Notification

**RFP# 7594582 – STATEWIDE SHORT-TERM TRAFFIC COUNTING SERVICES  
ADDENDUM #1  
SUBMISSION DEADLINE: FRIDAY, JULY 9, 2018 at 11:30 am**

Per the issuance of the Rhode Island Department of Transportation ADDENDUM # 7594582A1 the following changes and clarifications are noted:

- 1) THE ATTACHED REQUIRED FORMS WERE INADVERTENTLY OMITTED
- 2) THE ATTACHED COST PROPOSAL FORM WAS INADVERTENTLY OMITTED

APPROVED:

  
\_\_\_\_\_  
Jill J. Nascimento  
Chief Civil Engineer

6/14/18  
DATE

**STATEWIDE SHORT-TERM TRAFFIC COUNTING SERVICES - COST PROPOSAL  
SOLICITATION # 7594582**

ITEM NO.	ITEM DESCRIPTION	TOTAL QUANTITY	UNIT OF MEASURE	COST
1	48 hr ATR counts (1-2 lane) with Road Tube [includes Volume, Class, Speed]	1,523	Each	
2	48 hr ATR counts(1-2 lane) with VCU Cameras [includes Volume, Class, Speed]	70	Each	
3	48 hr ATR counts(3-4 lane) with VCU Cameras [includes Volume, Class, Speed]	20	Each	
4	48 hr ATR counts (4+ lane) includes Volume, Class, Speed	10	Each	
5	Turning Movement Count	144	Hour	
6	Non-Motorized Classification Count (Equipment)	35	Each	
7	Miscellaneous Tasks <sup>1</sup>	1000	Each	

<sup>1</sup> For a definition of Miscellaneous Tasks refer to Part B of the 'Project Tasks' section in the RFP  
Respondents who fail to submit a price for every item may be found non-responsive

Company Name:

Authorized Signature:

Print Name:

**CONSULTANTS**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS  
PRIMARY COVERED TRANSACTIONS FOR PRIME CONSULTANTS  
AND LOWER TIER PARTICIPANTS (SUBCONSULTANTS ETC.)**

**Appendix B - - certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions**

**INSTRUCTIONS FOR CERTIFICATION:**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion - - Lower Tier Covered Participants**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION  
AND OTHER RESPONSIBILITY MATTERS  
PRIMARY COVERED TRANSACTIONS**

In accordance with the code of Federal Regulations, Part 49 CFR Section 29.510, the prospective primary participant \_\_\_\_\_ (name of Authorized Agent), \_\_\_\_\_ (Title), being duly sworn (or under penalty of perjury under the laws of the United States), certifies to the best of his/her knowledge and belief, that its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall list exceptions below.

Exceptions will not necessarily result in denial of award, but, will be considered in determining contractor responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and the dates of the action. Providing false information may result in criminal prosecution or administrative sanctions. If an exception is noted the contractor must contact the Department to discuss the exception prior to award of the contract.

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\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Date

**Certification for Federal-Aid Construction/Consultant Contracts**

IN ACCORDANCE WITH PUBLIC LAW 101-1210 SECTION 319 (DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES) THE PROSPECTIVE PARTICIPANT CERTIFIES, BY SIGNING AND SUBMITTING THIS BID OR PROPOSAL, TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF, THAT:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.**

**(R.I.D.O.T. APPENDIX C)**



## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31, U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-00-46), Washington, D.C. 20503.

# DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 - 0348-0046  
(see reverse for public burden disclosure)

<p><b>1. Type of Federal Action:</b></p> <p><input type="checkbox"/> a. contract  <input type="checkbox"/> b. grant  <input type="checkbox"/> c. cooperative agreement  <input type="checkbox"/> d. loan  <input type="checkbox"/> e. loan guarantee  <input type="checkbox"/> f. loan insurance</p>	<p><b>2. Status of Federal Action:</b></p> <p><input type="checkbox"/> a. bid/offer/application  <input type="checkbox"/> b. initial award  <input type="checkbox"/> c. post-award</p>	<p><b>3. Report Type:</b></p> <p><input type="checkbox"/> a. initial filing  <input type="checkbox"/> b. material change</p> <p>For Material Change Only:  year _____ quarter _____  date of last report _____</p>
<p><b>4. Name and Address of Report Entity:</b></p> <p><input checked="" type="checkbox"/> Prime      <input type="checkbox"/> Subawardee  Tier ____, if known:   Congressional District, if known:</p>		<p><b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b></p> <p>Congressional District, if known:</p>
<p><b>6. Federal Department Agency:</b></p>	<p><b>7. Federal Program Name/Description:</b></p> <p>CFDA Number, if applicable: _____</p>	
<p><b>8. Federal Action Number, if known:</b></p>	<p><b>9. Award Amount, if known:</b></p> <p>\$ _____</p>	
<p><b>10. a. Name and Address of Lobbying Entity:</b></p> <p>(if individual, last name, first name, mi):</p>	<p><b>10. b. Individuals Performing Services (including address if different from No. 10a)</b></p> <p>(last name, first name, mi):</p>	
<p><b>11. Amount of Payment (check all that apply)</b></p> <p>\$ _____      <input type="checkbox"/> actual    <input type="checkbox"/> planned</p>	<p><b>13. Type of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. retainer  <input type="checkbox"/> b. one-time fee  <input type="checkbox"/> c. commission  <input type="checkbox"/> d. contingent fee  <input type="checkbox"/> e. deferred  <input type="checkbox"/> f. other, specify: _____</p>	
<p><b>12. Form of Payment (check all that apply):</b></p> <p><input type="checkbox"/> a. cash  <input type="checkbox"/> b. in-kind; specify: nature _____  value _____</p>		
<p><b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contracted, for Payment indicated in Item 11 (Attach Continuation Sheet(s) SF-LLL-A, if necessary):</b></p>		
<p><b>15. Continuation Sheet(s) SF-LLL-A attached:</b>    <input type="checkbox"/> yes    <input checked="" type="checkbox"/> no</p>		
<p><b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. this disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b></p>	<p>Signature: _____  Print Name: _____  Title: _____  Telephone No: _____ Date: _____</p>	
<p><b>For Federal use Only:</b></p>		<p>Authorized for Local Reproduction Standard Form - LLL-A</p>

Approved by  
03-48-0046

## DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

## **CONFLICTS DISCLOSURE POLICY**

To ensure that the Rhode Island Department of Transportation (RIDOT) maintains the continued confidence and trust of the people of Rhode Island in carrying out its mission, prospective vendors must disclose any family (or other personal) relationships, associations or connections that the vendor, its affiliates, or employees, may currently have with any RIDOT employee. A Conflicts Disclosure Statement shall be submitted to RIDOT from the following:

- ❖ Owners;
- ❖ Directors;
- ❖ Principals;
- ❖ Officers, board members, or individuals with corporate authority;
- ❖ If the vendor is a partnership, the applicant's partners;
- ❖ If the vendor is a limited liability company, its members and managers;
- ❖ Employees with decision-making authority, including executive directors, managers or individuals in a similar position with corporate authority; and
- ❖ Shareholders with a controlling interest.

**CONFLICTS DISCLOSURE STATEMENT**

RE: \_\_\_\_\_  
 \_\_\_\_\_

I, \_\_\_\_\_ hereby certify as follows:

I am employed as a \_\_\_\_\_ of \_\_\_\_\_  
 [TITLE] [COMPANY]

and to the best of my knowledge:

**PLEASE CHECK THE APPROPRIATE BOX:**

- I have no family or personal relations currently employed either on a full-time or part-time basis at the Rhode Island Department of Transportation.
- I do have family or personal relations currently employed at the Rhode Island Department of Transportation. Please list their name(s), title(s), and RIDOT Division(s) (if known):

NAME	TITLE	RIDOT DIVISION

*If necessary, please add any additional names as attachments hereto.*

**FOR ILLUSTRATIVE PURPOSES, FAMILY RELATIONS SHALL INCLUDE, WHETHER BY BLOOD, ADOPTION OR MARRIAGE, ANY OF THE FOLLOWING RELATIONSHIPS:**

**Father, Mother, Son, Daughter, Brother, Sister, Grandfather, Grandmother, Grandson, Granddaughter, Father-In-Law, Mother-In-Law, Brother-In-Law, Sister-In-Law, Son-In-Law, Daughter-In-Law, Stepfather, Stepmother, Stepson, Stepdaughter, Stepbrother, Stepsister, Half-Brother Or Half-Sister, Niece, Nephew, And Cousin**

❖ *If you are unsure whether a relationship, association, or connection you have may need to be disclosed, please consult with RIDOT's Legal Office at (401) 222-6510.*

\_\_\_\_\_  
**SIGNATURE**

\_\_\_\_\_  
**DATE**

By signing this form you: (1) certify that the information contained in this form is complete and accurate to the best of your knowledge; and (2) acknowledge your continuing obligation to complete and submit a new Disclosure form when there is any change in your family or personal relations during the course of this Contract.

*This document is used for internal RIDOT purposes only in order to address and avoid any potential conflicts at the inception of the contract process and to avoid any impropriety or the appearance of impropriety during the contract process. Any disclosures made hereto will not prejudice prospective vendors from selection.*



**USDOT Standard Title VI/Nondiscrimination  
Assurances for Contractors  
DOT Order 1050.2A**

I, \_\_\_\_\_, \_\_\_\_\_, a duly  
authorized representative of \_\_\_\_\_  
do hereby certify that the organization affirmatively agrees to the provisions set forth by *U.S. DOT  
Order 1050.2A, DOT Standard Title VI Assurances and Non-Discrimination Provisions (April 11, 2013)*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**APPENDIX A**

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 2. Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
- 3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

### Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on

- the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
  - The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

Last Update: November 2017



**DBE SPECIAL PROVISION**  
**DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION CERTIFICATION FOR**  
**CONTRACTORS AND CONSULTANTS**

With respect to the above numbered project, I hereby certify that I am the \_\_\_\_\_  
and duly authorized representative of \_\_\_\_\_ whose address is \_\_\_\_\_  
\_\_\_\_\_.

I do hereby certify that it is the intention of the above organization to affirmatively seek out and consider Disadvantaged Business Enterprises to participate in this contract as contractors, subcontractors and/or suppliers of materials and services. I agree to comply with the requirements of the U.S. Department of Transportation's regulations 49 CFR Part 26.

I understand and agree that any and all contracting in connection with this contract, whether undertaken prior to or subsequently to award of contract, will be in accordance with this provision. I also understand and agree that no contracting will be approved until the State Department of Transportation has reviewed and approved the affirmative actions taken by the above organization.

**DEFINITIONS:**

A "Broker," for purposes of this provision, is a DBE that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party.

A "DBE Contractor" or "DBE Subcontractor," for purposes of this provision, is a DBE that has entered into a legally binding relationship with an obligation to furnish services, including the materials necessary to complete such services.

"Disadvantaged Business Enterprise" or "DBE," for purposes of this provision, means a for-profit small business concern certified by the Rhode Island Department of Administration, under U.S. Department of Transportation certification guidelines (a) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

A "Joint Venture," for purposes of this provision, is an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

A "Manufacturer," for purposes of this provision, is a DBE that operates or maintains 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.

A "Regular Dealer" is a DBE that owns, operates, or maintains 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 stock, and regularly sold or leased to the

Rev.09/26/2017

public in the usual course of business. In the sale of bulk items, such as cement, asphalt, steel and stone, a DBE firm may be considered a "regular dealer" if it owns and operates the distribution equipment used to deliver its products. Any additional equipment used by a regular dealer shall be through long-term lease agreements rather than on an ad hoc or contract-by-contract basis.

"Race conscious" measures (goals) or programs are those that are focused specifically on assisting DBEs.

"Race neutral" measures (goals) or programs are those that are, or can be, used to assist all small businesses, including DBEs.

"Small Business Concern" means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121), and that does not also exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

"Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South America, or other Spanish or Portuguese culture or origin, regardless of race;
  - c. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian Tribe<sup>1</sup>, Alaska Natives, or Native Hawaiians;
  - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - e. "Subcontinent Asian Americans," this includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
  - f. Women; and
  - g. Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such as time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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<sup>1</sup> A "tribally-owned concern" means any concern at least 51 percent (51%) owned by an Indian tribe as defined in 49 CFR 26.5.

I. GENERAL REQUIREMENTS AND SANCTIONS:

- A. Failure by the Contractor to demonstrate every good faith effort in fulfilling its DBE commitment during the construction period will result in the reduction in contract payments by the amount determined by multiplying the awarded contract value by the established DBE percentage (listed in Section II. A. below), and subtracting the dollar value of the work actually performed by DBE contractors. This action will not preclude RIDOT from imposing sanctions or other remedies available as specified in paragraphs below.
- B. Contractors and subcontractors are advised that failure to carry out the requirements of this provision shall constitute a breach of contract and, after notification by the Department, may result in termination of the agreement or contract by the Department, or such remedy as the Department deems appropriate. Greater detail of the rules and regulations regarding DBE utilization can be found in the Rules and Regulations for RIDOT DBE Program.
- C. Brokering of work by DBEs is not allowed and is a contract violation unless DBE is a certified DBE broker. A DBE firm involved in brokering of work may have their certification removed or suspended and shall be subject to the sanctions stated herein. Any firm that engages in willful falsification, distortion or misrepresentation with respect to any facts related to the project shall be subject to sanctions described in paragraph (B) above and referred to the U.S. Department of Transportation's Office of the Inspector General for prosecution under Title 18, USC Section 1001.
- D. The Disadvantaged Business Enterprises Directory or other available resources may be obtained at the Rhode Island Department of Transportation Office of Civil Rights (OCR), 2 Capitol Hill, Providence, RI 02903, or at <http://odeo.ri.gov/>.
- E. The utilization of Disadvantaged Business Enterprises is in addition to all other equal opportunity requirements of this contract. The Contractor shall keep such records as are necessary to determine compliance with its Disadvantaged Business Enterprises Utilization obligations. The records kept by the Contractor shall include:
  - 1. The number of DBE contractors, subcontractors and suppliers; and the type of work, materials or services being performed on or incorporated in this project.
  - 2. The progress and efforts being made in seeking out DBE contractor organizations and individual DBE contractors for work on this project.
  - 3. Documentation of all correspondence, contacts, telephone calls, etc. necessary to obtain the services of DBEs on this project.
  - 4. Copies of canceled checks or other documentation that substantiates payments to DBE firms.
  - 5. All such records must be maintained for a period of three (3) years following acceptance of final payment and will be available for inspection by RIDOT and the Federal Highway Administration.
- F. A contractor for a construction contract will not be eligible for award of contract under this invitation for bids unless such contractor has submitted, at the time of the Bid Opening, this Certification. A Consultant will be required to sign this Certification at the time of the contract execution or the award of contract will be nullified.

II. PRE-AWARD REQUIREMENTS:

- A. Prior to contract award and within five (5) days from the opening of bids, the contractor/consultant shall, at a minimum, take the following actions to meet the race-conscious goal established by OCR, hereinafter referred to as the 'contract goal':
  - 1. Appoint an EEO Officer to administer the Contractor's DBE obligations.
  - 2. Submit to the RIDOT Construction Section for approval any subcontractor and/or supplier, and submit executed subcontract agreement(s)/purchase orders, including a detailed description of the

work and price, between the contractor and the qualified DBE to be utilized during the performance of work. In the case of consultant contracts, the consultant shall submit the above DBE obligation as stated in the Scope of Work. This DBE obligation shall be included in the proposal submission to the Design Section, and include the name of the DBE, scope of work, and the actual dollar value.

3. Each construction subcontract submitted shall be accompanied by a completed "DBE Utilization Plan" that specifies the items of work to be performed and the contractor's commitment to complete each subcontract entered into with a DBE pursuant to meeting the contract goal stated herein.
  4. Any subcontract for materials or supplies provided by a DBE broker, or for other services not provided directly by a DBE firm, shall be accompanied by the RIDOT Broker Affidavit form.
- B. In the event that the cumulative percentages submitted do not equal or exceed the contract goal, RIDOT will conduct a good faith effort (GFE) review to determine the extent of the prime contractor's efforts to seek out DBEs and afford adequate subcontracting opportunities to meet the contract goal. Evidence in support of the prime's actions must be submitted using RIDOT's Good Faith Effort Form (GFEF). This form contains examples of the types of evidence set forth in 49 CFR Part 26, Appendix A. RIDOT will consider this and other relevant evidence in making its GFE determination.
1. Where RIDOT has determined that the prime contractor made every good faith effort to meet the contract goal, the contract shall be awarded.
  2. Where RIDOT has determined that the prime contractor failed to make every good faith effort in meeting the contract goal, the contract shall not be awarded, and an opportunity for administrative reconsideration shall be provided.

### III. CONSTRUCTION PERIOD REQUIREMENTS:

#### A. Counting of Participation and Commercially Useful Function (CUF)

The total dollar value of a prime contract awarded to a DBE will be counted toward the DBE requirement. Likewise, all subcontract work performed by a DBE will count toward the DBE requirement.

The allowable value of a subcontract with DBE participation will be treated as the commitment of the prime contractor toward meeting the contract goal. The specific rules for crediting DBE participation toward contract goals are as follows:

1. When a DBE participates in a contract, RIDOT will consider only the value of the work actually performed by the DBE toward DBE goals. RIDOT includes the entire amount of that portion of a construction contract (or other contract not covered by paragraph (3) of this section) that is performed by the DBE's own forces. RIDOT credits the cost of supplies and materials purchased or leased by the DBE subcontractor for the work of the contract. However, supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate are not counted toward participation.
2. RIDOT credits 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 the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. 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 does not count toward DBE goals.
4. When a DBE performs as a participant in a *joint venture*, RIDOT will count 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 toward DBE goals.

RIDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function (CUF) on that contract.

1. A DBE performs a CUF 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, RIDOT evaluates 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. Even if a DBE is performing pursuant to normal industry practices, if those practices, in fact, erode the ability of the DBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE goal and may raise questions about the DBE eligibility.
2. Suppliers: A supplier is considered to perform a CUF when it packages, i.e. takes quotes from several manufacturers, and/or sells from its own inventory in order to provide one or more items to a contractor. A supplier may own a franchise and/or may be a factory representative to one or more manufacturers. Consistent with a contractor's probable needs, a supplier, not a contractor, may place orders for production with manufacturers.
3. "Pass through" supply operations occur when the contractor decides what items shall be bought from what sources and/or agrees directly with the manufacturer, or other non-DBE party, to schedule delivery and/or directs adjustments and/or routes payments and purchase orders through the DBE. Pass through operations are not commercially useful functions and will not be counted toward contract goals.
4. Management: The DBE must manage the work that has been contracted to its firm. The DBE owner must supervise daily operations, either personally, or with a full-time, skilled and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be present on the job site and under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.
5. Workforce: In order to be considered an independent business, a DBE must keep a regular workforce. DBEs cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control, see paragraph 9 of this section. The DBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.
6. Trucking: RIDOT will consider the following factors in determining whether a DBE trucking company is performing a CUF. The DBE must manage and supervise the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - a. The DBE itself must own and operate at least one fully licensed, insured, and operational vehicle being used on the contract.
  - b. The DBE must receive compensation for the total value of the services it provides on the contract using vehicles it owns, insures, and which are operated by drivers it employs.
  - c. The DBE may lease vehicles from another DBE firm, including an owner-operator who is certified as a DBE. The DBE which leases vehicles from another DBE shall receive credit for the total value of the services the lessee DBE provides on the contract.
  - d. The DBE may also lease vehicles from a non-DBE firm, including from an owner-operator. The DBE which leases vehicles from a non-DBE is entitled to credit for the total value of

services provided by non-DBE lessees not to exceed the value of services provided by DBE-owned vehicles on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

Example to this subsection (6) (d): DBE firm X uses two of its own trucks on a contract. It leases two trucks from DBE firm Y and six trucks from non-DBE firm Z. DBE credit would be awarded for the total value of transportation services provided by firm X and firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by firm Z, DBE credit could be awarded only for the fees or commission pertaining to those trucks firm X receives as a result of the lease with firm Z.

- e. For purposes of this subsection, a lease must indicate that the DBE has exclusive use of and control over vehicles used on the project. This does not preclude vehicles 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 the use of the leased vehicle. Leased vehicles must display the name and identification number of the DBE.
7. All expenditures with manufacturers and suppliers must be properly documented in writing in order to count toward a DBE obligation. RIDOT will count expenditures with DBEs for materials or supplies toward DBE goals as follows:
- a. For a DBE contractor (furnish and install) to receive credit for supplying materials, the DBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.
  - b. If the materials or supplies are purchased from a DBE manufacturer, RIDOT will count 100 percent of the cost of the materials or supplies.
  - c. If the materials or supplies are purchased from a DBE regular dealer, RIDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.
  - d. With respect to flaggers, when flaggers are provided, RIDOT will count 60 percent of the labor. When traffic signs are included with flaggers, the work will be counted as 100 percent.
  - e. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, RIDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials and supplies required on a job site, toward DBE goals, provided RIDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. The fees will be evaluated by RIDOT after receiving the Broker's Affidavit Form from the DBE. RIDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals.
8. Subcontractor: A subcontractor arrangement exists when a person or firm has a contractual obligation to perform a defined portion of the contract work and the following conditions are present:
- a. Compensation is determined by the amount of work accomplished, rather than being paid on an hourly basis.
  - b. The subcontractor exercises control over work methods (except as limited by project specifications), while furnishing and managing its own labor and equipment with only minimal, general supervision being exercised by the prime contractor.

- c. The personnel involved in the DBE subcontractor's portion of the project are both under the subcontractor's direct supervision and identified on its payroll records. When warranted by unique circumstances of a project, a DBE subcontractor may be permitted to employ on a limited basis specialty trades personnel who are not normally employed by the DBE subcontractor.
  - d. Second tier DBE subcontracting will be approved only in accordance with normal industry practice and when the type of work differs from work which the DBE usually performs.
9. All factors pertaining to the unique conditions of a project shall be considered in determining whether a DBE subcontractor relationship actually exists on the project. A DBE subcontractor may need to lease/rent equipment, other than over-the-road trucks, and/or augment its workforce with additional skilled personnel in order to perform certain project-related work. The DBE subcontractor is required to arrange for the necessary equipment through rental/leasing agreements, as necessary. (Off-the-road equipment, such as "Euclids," may be rented/leased from the prime contractor even though the CUF guidelines prohibit rental/lease of over-the-road trucks from the prime contractor.) Likewise, in limited instances, the prime contractor may provide some, but not all, personnel to the DBE subcontractor when the following conditions are present:
- a. A DBE must perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force.
  - b. The DBE must not subcontract a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.
  - c. The personnel must have a specialized expertise which has not been mastered by the DBE's own skilled/supervising/managerial personnel.
  - d. Such personnel must be placed on the DBE's payroll and come under the direct supervision of the DBE for the performance of the particular subcontract work.
  - e. The deployment of such personnel must be accomplished within the framework of a mentor-protégé agreement; or for emergency purposes, by contract change order. All instances of combining personnel must be for developmental purposes in which teaching/demonstration/consulting to the DBE must occur.
  - f. Long term, continual (e.g. from one contract to another) or chronic use by a DBE firm, of personnel normally employed by another specific firm, lacking a mentor-protégé agreement which is being carried out in good faith, is not consistent with the CUF guidelines.
  - g. To place entire work crews on DBE's payrolls when such personnel are normally employed by another specific firm is not consistent with the CUF guidelines.
  - h. A DBE may need to lease/rent equipment, except for over-the-road trucks, in order to be properly equipped to execute the work of a mentor-protégé agreement. In such cases where the DBE has investigated several possible sources of such equipment within a reasonable geographical area to the project, the DBE may find the best offer was made by the prime contractor or another subcontractor on the project. In such cases, the DBE may rent/lease such equipment from the prime or another subcontractor, provided that the use of such equipment is material to demonstrating/teaching objectives set forth in the mentor-protégé agreement. Thus, the DBE's regular employees, not those temporarily furnished by the prime contractor, or another subcontractor, shall operate such equipment for the majority of the time during which the equipment is used in the work of the DBE subcontractor under the mentor-protégé agreement.
  - i. A DBE's use of equipment owned by a prime contractor or another subcontractor or without an appropriate mentor/protégé program is inconsistent with the CUF guidelines and will result in noncompliance.
10. If a contractor or subcontractor is not certified as a DBE by the Minority Business Enterprise Compliance Office under the specific NAICS code of line items identified in the contract, at the

time of the execution of the contract or issuance of the purchase order, RIDOT will not count that firm's participation toward any DBE goals, except as provided in 49 CFR 26.87(i).

11. RIDOT will not count toward the contract goal the dollar value of work performed by a contractor or subcontractor after it has ceased to be a certified DBE.
12. RIDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until all payments being credited have been fully paid to the DBE.

#### B. DBE Replacement and Termination:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains RIDOT's written consent as provided in this section; and unless RIDOT's consent is provided under this paragraph, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

##### 1. Good Cause for Replacement or Termination

The prime contractor must provide the Department's OCR with a copy of its "Intent to Substitute /Terminate" notice to the DBE setting forth the reasons for the request. This notice must advise the DBE that it has five (5) days to respond (to prime and State) with objections and why the State should not approve the prime's proposed action.

After adequate notice by the Contractor, if any DBE is unable to perform work committed toward the goal, the DBE shall provide to the OCR a signed statement stating why it is unable to complete the work. The Contractor shall document its efforts to have another DBE perform the item or to have a DBE perform other items to replace the original DBE commitment amounts. In the event the Contractor is not able to find replacement DBE work, the Contractor must provide the OCR with documentation clearly evidencing its good faith efforts. Contractors are prohibited from terminating for convenience any DBE firm used to fulfill a commitment pursuant to meeting the contract goal stated herein.

Prior to substitution or termination of a DBE subcontractor, the contractor shall demonstrate good cause and obtain written approval from the OCR.

In accordance with 49 CFR Part 26.53 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 2 CFR Parts 180, 215 and 1200 or applicable state law;
- f. RIDOT determines that the listed DBE subcontractor is not a responsible contractor;
- g. The listed DBE subcontractor voluntarily withdraws from the project and provides to RIDOT 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;
- j. Other documented good cause that RIDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that RIDOT deems appropriate.

## 2. Good Faith Efforts to Replace

When a DBE subcontractor is terminated as provided in paragraph (1) of this section, or fails to complete its work on the contract for any reason, RIDOT requires the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal RIDOT established for the procurement. The good faith efforts shall be documented by the contractor. If RIDOT requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and RIDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. The determination shall be made by the DBELO, under the criteria established below.

If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the change order as well as to the original contract. In the event of significant change orders, good faith efforts are required dependent upon the type of change order; RIDOT determines on a case-by-case basis what constitutes good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant. When a change order decreases work, i.e. RIDOT determines specific line items are no longer necessary on a contract or there is a quantity change on an item, no good faith effort must be shown. However, when an increase of work occurs or there is a termination of a DBE, good faith efforts must be shown in accordance with the preceding requirements.

### C. Monthly Payment Certifications:

All contractors on RIDOT projects are required to certify their payments to subcontractors by use of RIDOT's contractor compliance software on a minimum of a monthly basis (which, at time of publishing, is Prism). A project may not proceed to finalization without the input of this information. RIDOT's Prompt Payment Clause applies to both DBE and non-DBE subcontracts. The Contractor is responsible for the subcontractors' compliance with the submission of their payment reporting by way of this software.

### D. Joint Check Procedure for DBEs:

A prime contractor must receive written approval by the Department's DBELO before using a joint check for materials/supplies called for under a subcontract with a DBE. Joint check requests shall be submitted by the prime contractor to the Department's OCR in writing along with a Joint Check Affidavit and the subcontract agreement. The following are general conditions that must be met regarding joint check use:

1. The use of the joint check shall only be allowed by exception and shall not compromise the independence of the DBE;
2. The second party (typically the prime contractor) acts solely as a guarantor;
3. The DBE must release the check to the supplier;
4. The subcontract agreement must reflect the total contract value, including the cost of materials and installation; actual payments for work performed by the DBE may reflect labor only; and
5. The DBE remains responsible for negotiation of price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself.

IV. FINAL SUBCONTRACTOR PAYMENTS AND RELEASE OF RETAINAGE

Prior to receiving final payment, the Contractor shall provide to the Resident Engineer certification of the dollars paid to each DBE firm using Form "DBE Request for Verification Payment." The certification shall be dated and signed by a responsible officer of the Contractor and by the DBE. Falsification of this certification will result in sanctions listed in Sections I. of this provision.

If this contract contains a DBE goal, the Contract Compliance Officer with the OCR will verify that the Contractor has attained the DBE goal specified on said project or has provided adequate documentation justifying a lesser amount. The final estimate will not be paid to the Contractor until proper certifications have been made.

When a subcontractor's work is satisfactorily complete (i.e., all the tasks called for in the subcontract have been accomplished and documented), and the Department has partially accepted the work and all payments have been certified by the Contractor and subcontractor on the "Certification of Progress Payment" form, the Prime Contractor shall release all retainage held by the Prime Contractor within thirty (30) days of satisfactory completion of the subcontractor's work. The subcontractor shall submit to the Prime Contractor the final executed form within ten (10) days of receipt of payment.

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Signature of Contractor or Consultant

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Date