

DISADVANTAGED BUSINESS ENTERPRISE

I. Policy

It is the policy of the City of Gardena that Disadvantaged Business Enterprises (DBEs) shall have the maximum opportunity to participate in contracts and subcontracts. Those contracts and subcontracts financed in whole or in part by the U. S. Department of Transportation are subject to the provisions of Title 49 of the Code of Federal Regulations, Part 23.

In each construction project, goals for DBE utilization shall be specified. It is the intention of the City that these DBE goals be achieved.

If a bidder does not achieve the goal his bid will be deemed non-responsive unless he demonstrates to the City that he has taken good faith affirmative action steps to achieve the goal. The affirmative action steps which must be taken and documented are set forth herein.

II. Qualified Disadvantaged Business Enterprise

A "disadvantaged business enterprise" is one which is: a) a small business per section 3 of the small Business Act; b) at least 51 percent owned by one or more socially and economically disadvantaged individuals, or , in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and c) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. A qualified DBE is also one which has been certified by the City, the SBA per section S(a) or another U. S. DOT agency or recipient.

"Socially and economically disadvantaged individuals: are those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans*, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section S(a) of the Small Business Act. The City shall make a rebuttable presumption that individuals in these groups are socially and economically disadvantaged. The City also may determine, on a case-by-case basis, that individuals who are not a member of one of these groups are socially and economically disadvantaged.

*To Include Portuguese Americans

- A. Small business concern eligibility is determined by:
 - 1. Presentation of an SBA Section 3 certification; or
 - 2. Presentation of a documented certified statement that the firm meets the size standards of a small business in accordance with 13 CFR Part 121. These size standards are available from the City.
- B. DBE eligibility is determined by:
 - 1. Successfully completing Schedule A (for single enterprises) or Schedule B (for joint ventures), resulting in certification by the City. Schedules A and B are available from the City; or
 - 2. Presenting certification of social and economic disadvantage by the SBA under its section 8(a) program (DBEs only); or
 - 3. Presenting a legitimate certification from another U. S. DOT recipient or agency; or
 - 4. Presenting other satisfactory documentation of social and economic disadvantage.
- C. Denial of certification is final for all contracts being let at the time of denial, however, firms denied certification may correct deficiencies and apply for certification for future contracts. Also, any firm which believes it has been wrongly denied certification may file an appeal with U. S. DOT in accordance with the procedures described in 49 CFR 23.

III. Method of Calculating DBE Utilization

In calculating the total DBE utilization percentages, the bidder shall include:

- A. The total dollar value of DBE sub-bids.
- B. The total dollar value of materials and supplies to be supplied by DBEs if they are manufacturers. If the DBE supplier is not also the manufacturer, the 60% of the total dollar value is calculated toward the DBE goal.
- C. The dollar value of all work to be performed with a prime contractor's own forces may be included if he/she is a DBE. If the bidder is a joint venture, it shall include only the DBE proportionate interest in the joint venture.

IV. Responsible Bidder

In order to be judged responsible, a bidder, in addition to meeting the legal minimum requirements of bonding, licensing and financial ability to perform the work, must be found responsive, that is, must respond in writing to the requirements of the specifications by either meeting the DBE utilization goals as shown in Part I of the Responsible Bidder Report or taking adequate good faith efforts to meet the goal, which efforts shall consist of, but not be limited to, the affirmative action steps set forth below:

- A. Attendance at the Pre-bid meeting.
- B. Advertisement in the Dodge Construction News for specific DBE sub-bids. The advertisements shall be placed in the "request for sub-bid" section at least 14 days prior to bid opening. These ads should include the following information:
 - 1. Project name and location.
 - 2. Indication of City of Gardena as owner.
 - 3. Bonding requirements, if any.
 - 4. Location where plans and specifications can be obtained.
 - 5. Sub-bid due date.
 - 6. Sub-trades required.
 - 7. Statement that bid solicitation is in response to City of Gardena DBE program.
- C. Notification of DBE Contractor Associations at least 14 days prior to bid opening. The DBE Contractor Associations to be notified shall include, but not be limited to, those listed below:
 - California Association of Minority-American Contractors
 - Minority Contractors Association of Los Angeles
 - Minority Contractors Association of Pasadena
 - United Indian Development Association
 - Oriental Builders Association

Addresses and names of contact persons for the above listed DBE Contractor Associations are available from the City.

The same information as required in the Dodge advertisement shall be included in the requests to DBE associations.

- D. All bidders shall extend written invitation to DBE firm(s) for at least a sufficient number of trade subcontracts or material quotations such that the DBE

participation goals would be met or exceeded. A listing of DBE subcontractors is available from the City. Written invitation shall be such that receipt of DBE firms can be confirmed, e.g. registered mail.

- E. Agreements between a bidder and a DBE in which the DBE promises not to provide quotations to other bidders are prohibited.
- F. Submit Parts I and/or II of the Responsible Bidder's Report.

V. Responsible Bidder's Report

All bidders shall submit the information required in Part I of Responsible Bidder's Report with the bid as set forth below:

Part I

- a) A list of all DBE subcontractors proposed to be used for the project. This listing shall include the company name, contact person and phone number, along with the dollar value of the proposed subcontract.
- b) If the prime contractor qualifies as a DBE or is joint venturing with a DBE, a description and the dollar value of the proposed work that he intends to perform with his own forces, together with a statement of the percentage interest in the contract held by the joint venturer DBE.
- c) A list of DBE materials suppliers to be used and cost of materials and supplies.
- d) A summation of the dollar value of items a, b, and c for DBEs stated as percentages of the bid. If these percentages are less than the contract goals stated in the proposal section of this specification, the bidder shall in addition document his good faith efforts to meet the goal by supplying the information required in Part II of the Responsible Bidder's Report.

Part II

- a) Documentation of affirmative action steps required in No. 4, including a description of the information supplied to DBEs regarding the plans and specifications for the portion of the work to be performed.
- b) A detailed statement of all other efforts made to obtain DBE bids.

- c) A list of DBE subcontractors or suppliers who failed or refused to bid after being invited to do so, together with the reasons, if any, which were given for such failure or refusal.
- d) A list of all DBE sub-bids which were not used, giving reasons why they were rejected. Reasons for rejections may include:
 - 1. Firm does not hold a current contractor's license for the proposed work;
 - 2. Firm does not have the necessary experience, organization, technical qualifications, skills or facilities to perform the proposed work;
 - 3. Firm is unable to comply with a reasonable performance schedule;
 - 4. Firm did not quote a reasonable price for the work proposed. Contractor must submit and document all other sub-bids received for the work proposed. An unreasonable price is one which is higher than the median of all sub-bids received and the bidder's estimate. This median price can be limited to 25% more than the lowest sub-bid received.

VI. Hearing

The DBE Liaison Officer and the City Engineer shall make an initial determination of the responsiveness of all bids. If it is determined that the low monetary bidder is apparently non-responsive in that he neither meets the DBE utilization goal nor has taken adequate good faith efforts to meet that goal, the City Engineer will inform the low bidder that his bid will be recommended for rejection, the reasons therefor, and that he has a right to appear before the City for a hearing when the contract for the project is scheduled to be acted upon and show that the initial determination is incorrect, and that he has, in fact, complied with the City's bidding procedures.

If it is found by the City that he has not complied with the City's bidding procedures, the City shall either award the contract to the next lowest responsible bidder or shall reject all bids.

VII. Substitution of Subcontractors

If a contractor, after award, should request a substitution of subcontractors pursuant to the provisions of the California Government Code, the contractor shall use efforts in cooperation with the City's staff to replace a DBE subcontractor with another DBE subcontractor subject to the approval of the City. These best efforts shall be the same as those specified in No. 4.

VIII. Contractor Performing 100% of the Work

A contractor who does not wish to subcontract any portion of work under a bid will not be exempt from the DBE requirements under any bid for which DBE goals have been established prior to advertisement. Such contractor will be held to the same requirements as other contractors with respect to meeting proposed DBE goals and with respect to documenting reasons for not meeting such goals.

IX. Monitoring of DBE and WBE Participation

To ensure that all obligations under contracts awarded to DBEs are met, the City shall review the contractor's DBE involvement efforts during the performance of the contract. The contractor shall bring to the attention of the City any situation in which regularly scheduled progress payments are not made to DBE subcontractors.

X. Willful Provision of Incorrect Information

If at any time, U.S. DOT or the City has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the General Counsel of U.S. DOT for further proceedings in accordance with 49 CFR 23.

EXHIBIT 4

REQUIRED STATEMENTS IN AGREEMENTS

CITY OF GARDENA
DBE/MBE/WBE CERTIFICATION

Small. Minority and Women's Business Enterprise. The Contractor shall be responsible for meeting the applicable regulations regarding participation by minority business enterprises (MBE) as set forth at 49 C.F.R. Part 23, 45 F.R. 21172 et seq., March 31, 1980, or any revision or supplement thereto.

- I. POLICY. It is the policy of The Department of Transportation that minority business enterprises, as defined in 49 C.F.R. Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds. Consequently, the MBE requirements of 49 C.F.R. Part 23 apply to this contract.

- II. MBE OBLIGATION. The Contractor and its subcontractors agree to ensure that minority business enterprises as defined in 49 C.F.R. Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided. In that regard all Contractors and subcontractors shall take all necessary and reasonable steps in accordance with 49 C.F.R. Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Contractors and their subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of dot-assisted contracts.
 - A. Each Contractor and subcontractor is advised that failure to carry out the requirements set forth in 49 C.F.R. Part 23.43(a) shall constitute a breach of contract and, after the notification of the Department, may result in termination of the contract or such remedy as deemed appropriate.
 - B. On January 15, 1985, FTA published Circular C4716.1, which changed the requirements to be met by Transit Vehicle Manufacturers {TVM'S}. As advised by paragraph 2(c) of Chapter II, C4716.1 certification of TVM's of compliance with the requirements is required as part of the Proposal. Included with Bid Response Forms is a certification form.
 - C. The certification of compliance with subpart D, 49 C.F.R. Part 23 shall be submitted with Bid Response Forms.

By:

Company

Signature

Name

Title

EXHIBIT 5

DETERMINATION OF DBE ELIGIBILITY

In determining the eligibility of a disadvantaged business, the City will take at least the following steps:

1. Perform an on-site visit to the offices of the firm and to any job sites on which the firm is working at the time of the eligibility investigations.
2. Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals.
3. Analyze the ownership of stock in the firm, if it is a corporation.
4. Analyze the bonding and financial capacity of the firm.
5. Determine the work history of the firm, including contracts it has received and work it has completed.
6. Obtain or compile a list of equipment owned or available to the firm and the licenses of the firm and its key personnel to perform the work it seeks to do as part of the DBE program.
7. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program.

Dear Contractor:

Thank you for your interest in participating in the City of Gardena's Disadvantaged Business Enterprise (DBE) Program.

The purpose of the program is to increase the level of participation of DBEs in all of our contracting activities. Pursuant to Federal regulations (49CFR23), to participate in our program, qualifying firms must first be certified as a DBE by the City. If you wish to be considered for certification, please complete the attached questionnaire.

In order to expedite our review, please complete all portions of the questionnaire. Indicate nonapplicable items by using "N/A". Copies of documents requested in the questionnaire are required and must be submitted unless they were previously requested and are presently in the possession of this office. Additional documentation may be requested if it is considered necessary to make a certification determination. Incomplete questionnaires, or any without the required documents, will be returned or held until such documents are submitted.

Only small business concerns, owned and controlled by one or more socially and economically disadvantaged individuals, can be certified as a DBE. Owned and controlled means that:

- a. at least 51 percent of the small business concern is owned by one or more socially and economically disadvantaged 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 small business concern is one that:

- a. is certified as such by the Small Business Administration under Section 3 of the Small Business Act (13CFR121); or
- b. is determined as such by the City which applies the standards of the Small Business Act (13CFR121).

Please mail the completed questionnaire to:

DBE Liaison Officer
City of Gardena
1700 West 162nd Street
P.O. Box 47003
Gardena, CA 90247-6803



SCHEDULE A
INFORMATION FOR DETERMINING
DISADVANTAGED BUSINESS ENTERPRISE ELIGIBILITY

1. Name of firm _____
2. Address of firm _____
3. Phone number of firm _____
4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (please specify) _____
5. Nature of firm's business _____
6. Years firm has been in business _____
7. Ownership of firm: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less than 100 percent minority owned.

a	b	c	d	e	f
Name	Race	Sex	Years of Ownership	Ownership Percentage	Voting Percentage

With firms less than 100 percent minority owned, list the contributions of money, equipment, real estate, or expertise of each of the owners.

8. Control of firm: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
 - (1) Financial decisions _____
 - (2) Management decisions, such as
 - a) Estimating _____
 - b) Marketing and sales _____
 - c) Hiring and firing of management personnel _____
 - d) Purchase of major items or supplies _____
9. For each of those listed in question 8, provide a brief summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.
10. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of minority owners.
11. Identify any owner (see item 7) or management official (see item 8) of the named firms who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.
12. What are the gross receipts of the firm for each of the last two years?

Year ending _____ \$ _____
Year ending _____ \$ _____

13. Name of bonding company, if any: _____
Bonding limit _____
Source of letters of credit, if any _____
14. Are you authorized to do business in the state as well as locally, including all necessary business licenses?
15. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as a DBE and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____ (name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or state laws concerning false statements."

NOTE : If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any significant change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee immediately.

Signature _____
Name _____
Title _____
Date _____

Corporate seal (where appropriate).

Date _____
state of _____
County of _____

On this _____ day of _____, 20____, before me appeared
(name) _____, to me personally known, who, being duly sworn, did
execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____
to execute the affidavit and did so as his or her free act and deed.

(Seal)

Notary Public _____

Commission expires _____

SCHEDULE B

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY



(This form need not be filled in if all joint venture firms are DBE owned.)

1. Name of joint venture _____
2. Address of joint venture _____
3. Phone number of joint venture _____
4. Identify the firms which comprise the joint venture. (The DBE partner must complete Schedule A.)
 - a) Describe the role of the DBE firm in the joint venture: _____
 - b) Describe very briefly the experience and business qualifications of each non-DBE joint venturer: _____
5. Nature of the joint venture 's business: _____
6. Provide a copy of the joint venture agreement _____
7. What is the claimed percentage of DBE ownership? _____
8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)
 - a) Profit and loss sharing _____
 - b) capital contributions, including equipment _____
 - c) Other applicable ownership interests _____
9. Control of and participation in this contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision making, including, but not limited to, those with prime responsibility for:
 - a) Financial decisions _____
 - b) Management decisions, such as:
 - (1) Estimating _____
 - (2) Marketing and sales _____
 - (3) Hiring and firing of management personnel _____
 - (4) Purchasing of major items or supplies _____
 - c) Supervision of field operations _____

NOTE : If, after filing this schedule B and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

AFFIDAVIT

"The undersigned swear that the foregoing statements are true and correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm

Signature

Name

Title

Date

Name of Firm

Signature

Name

Title

Date

Date _____

State of _____

County of _____

On this _____ day of _____, 20_____, before me appeared
(Name) _____, to me personally known, who, being duly sworn, did
execute the foregoing affidavit, and did state that he or she was properly authorized by
(name of firm) _____ to execute the affidavit and did so as his or her free act and
deed.

Notary Public _____

Commission expires _____

(Seal)

Date _____

State of _____

County of _____

on this _____ day of _____, 20_____, before me appeared
(Name) _____, to me personally known, who, being duly sworn, did execute
the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) _____
to execute the affidavit and did so as his or her free act and deed.

Notary Public _____

Commission expires _____

(Seal)