**STATE OF ILLINOIS**

**REQUEST FOR PROPOSALS (RFP)**

CONTRACT - P3 DELIVERY #16001 – VARIOUS COUNTIES

**ADDENDUM NO. #3**



**ATTACHMENT NN – DISADVANTAGED BUSINESS ENTERPRISES PARTICIPATION ANDUTILIZATION PLAN**

Revisions have been made to Attachment NN, Section 7.11.1, 7.11.2, 7.11.2.1, 7.11.2.3, and 7.11.4.

Replace Attachment NN with the attached.

For more information on IDOT’s DBE program, contact: Office of Business & Workforce Diversity, Bureau of Small Business Enterprises at 217-782-5490.

**Contract Goal to be** achieved **by the Vendor:** This solicitation includes a specific **DBE** utilization goal of **10%** based on the availability of certified vendors to perform or provide the anticipated services and/or supplies required by this solicitation. In addition to the other award criteria established for this solicitation, the Department will award this contract to a Vendor that meets the goal or makes good faith efforts to meet the goal. This goal is also applicable to change orders and allowances within the scope of work provided by the certified vendor.

Following are guidelines for the Vendor’s response to the Utilization Plan. A format for the Utilization Plan is included in this section. Vendor should include any additional information that will add clarity to the Vendor’s proposed utilization of DBEs to meet the contract goal. The Utilization Plan must demonstrate that the Vendor will either: (1) met the entire contract goal; (2) made good faith efforts towards meeting the entire goal; or (3) made good faith efforts towards meeting a portion of the goal.

1. At the time of proposal submission, the DBE must meet the eligibility requirements and be fully certified as a DBE in Illinois.Visit <http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index> for the Illinois Unified Certification Program (IL-UCP) Directory and to apply for certification as a DBE from any of the participating IL-UCP certifying agencies. The Vendor shall submit a Utilization Plan on completed Department forms. **The final Utilization Plan must be submitted prior to final selection. Failure to complete a Utilization Plan and/or provide Good Faith Effort Documentation may render the bid or offer non-responsive.**
2. If applicable, the Utilization Plan should include an executed Joint Venture agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract. The joint venture agreement must clearly evidence that the DBE will be responsible for a clearly defined portion of the work and that its responsibilities, risks, profits and contributions of capital and personnel are proportionate to its ownership percentage. It must include specific details related to the parties’ contributions of capital, personnel and equipment and share of the costs of insurance and other items; the scopes to be performed by the DBE’s own forces and under its supervision; and the commitment of management, supervisory personnel and operative personnel employed by the DBE to be dedicated to the performance of the contract. Each joint venture partner must execute the proposal to the Department.
3. An agreement between a Vendor and a DBE in which the DBE promises not to provide subcontracting quotations to other vendors is prohibited. The Department may request additional information to demonstrate compliance. The Vendor agrees to cooperate promptly with the Department in submitting to interviews, allowing entry to places of business, providing further documentation, or soliciting the cooperation of a proposed DBE. Failure to cooperate may render the proposal non-responsive. The contract will not be finally awarded until the Vendor’s Utilization Plan is approved.
4. **Vendor Assurance:** The Vendor makes the following assurance and this assurance must be included in each subcontract that the Vendor signs with a subcontractor or supplier. The Vendor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Vendor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts funded in whole or in part with federal or state funds. Failure by the Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems appropriate, which may include, but is not limited to:

(a) Withholding payments;

(b) Assessing sanctions;

(c) Liquidated damages; and/or

(d) Disqualifying the Vendor from future contracting as non-responsible.

1. **Calculating DBE Participation:** The Utilization Plan documents represent work anticipated to be performed by all DBEs and paid for upon satisfactory completion. The Department is only able to count the value of payments made for the work actually performed by DBE companies toward the achievement of the overall goal and the contract goal.

5.1. The value of the work actually performed by the DBE’s forces shall be counted towards the goal. The entire amount of that portion of the contract that is performed by the DBE’s forces, including supplies purchased or equipment leased by the DBE shall be counted, except supplies purchased and equipment rented from the Vendor.

* 1. Count 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 DOT-assisted contract, toward DBE goals, provided IDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  2. A joint venture shall count the 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 forces toward the goal. A joint venture shall also count the dollar value of work subcontracted to other DBEs. Work performed by the forces of a non-DBE joint venture partner shall not be counted toward the goal.
  3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work shall be counted toward the contract goal only if the DBE’s subcontractor is a DBE. Work that a DBE subcontracts to a non-DBE will not count towards the goal.
  4. A Vendor shall count towards the goal 60 percent of its expenditures for materials and supplies required under the contract and obtained from a DBE manufacturer, regular dealer or supplier.
  5. A Vendor shall count towards the goal only expenditures to DBEs that perform a commercially useful function in the work of the contract as defined in 49 CFR 26.55(c).
     1. 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 or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the material or supplies. To determine whether a firm is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.
     2. 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 funds are passed to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department shall examine similar transactions, particularly those in which DBEs do not participate.
  6. A Vendor shall not count towards the goal expenditures that are not direct, necessary and proximately related to the work of the contract. Only the amount of services or goods that are directly attributable to the performance of the contract shall be counted. Ineligible expenditures include general office overhead or other Vendor support activities.

1. **Good Faith Effort Procedures**: If the Vendor cannot meet the goal, the Vendor must document in the Utilization Plan its good faith efforts that could reasonably have been expected to meet the goal. Vendors must submit utilization forms that meet or exceed the published goal or submit utilization forms that describe a percentage participation that is less than the goal and submit documentation regarding good faith efforts at the time of proposal submission. The Department will consider the quality, quantity, and intensity of the Vendor’s efforts. Mere *pro forma* efforts, in other words, efforts done as a matter of form, are not good faith efforts; rather, the Vendor is expected to have taken genuine efforts that would be reasonably expected of a Vendor actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.
   1. The following is a list of types of action that the Department will consider as evidence of the Vendor's good faith efforts to meet the goal. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases, and will be considered by the Department
      1. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified vendors that have the capability to perform the work of the contract. The Vendor must solicit this interest within sufficient time to allow the certified vendors to respond to the solicitation. The Vendor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations and encourage them to bid or submit offers. The Vendor must provide interested certified vendors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation.
      2. Selecting portions of the work to be performed by certified vendors in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate certified vendor participation, even when the Vendor might otherwise prefer to perform these work items with its own forces.
      3. Making a portion of the work available to DBEs and selecting those portions of the work or material needs consistent with their availability, so as to facilitate DBE participation.
      4. Negotiating in good faith with interested DBEs. It is the Vendor’s 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 the information provided regarding the plans, specifications, and requirements for the work selected for subcontracting and evidence as to why additional agreements could not be reached for DBEs to perform the work. A Vendor using good business judgment will consider a number of factors in negotiating with DBEs and will take a firm’s price and capabilities as well as contract goals into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Vendor’s failure to meet the DBE goal, as long as such costs are reasonable. Also the ability or desire of a Vendor to perform the work of a contract with its own organization does not relieve the vendor of the responsibility to make good faith efforts. Vendors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was elected over a DBE for work on the contract.

6.1.5. Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The DBE’s memberships in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Vendor’s efforts to meet the goal.

* + 1. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the Department, the Vendor or to perform the scope of work.
    2. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
    3. Effectively using the services of available minority/women community organizations; minority/women vendors’ groups; local, state, and federal minority/women business assistance offices; including IDOT’s supportive services vendors; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
  1. In evaluating the Vendor’s good faith efforts, the good faith efforts of other vendors to meet the goal on this solicitation or similar contracts may be considered.
  2. If the Department determines that the Vendor has made good faith efforts to meet the goal, the Department will award the contract provided that the Vendor is otherwise eligible for award.
  3. If the Department determines that good faith efforts have not been made, it will notify the Vendor in writing that the proposal is not responsive. The notification shall include a statement of reasons for the determination. If the Utilization Plan is not approved because it is deficient as a technical matter, unless waived by the Department, the vendor will be notified and will be allowed no more than a five calendar day period in order to cure the deficiency.
     1. The bidder may request administrative reconsideration of a determination adverse to the bidder within the five working days after the receipt of the notification date of the determination by delivering the request to the Illinois Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764 (Telefax: (217) 785-1524). Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The determination shall become final if a request is not made and delivered. A request may provide additional written documentation and/or argument concerning the issues raised in the determination statement of reasons, provided the documentation and arguments address efforts made prior to submitting the offer or proposal. The request will be forwarded to the Department’s Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person in order to consider all issues of documentation and whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten working days after receipt of the request for consideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid not responsive. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

1. **Contract Compliance**: Compliance with this section is an essential part of the contract. The following administrative procedures and remedies govern the Vendor’s compliance with the contractual obligations established by the Utilization Plan. After approval of the Utilization Plan and award of the contract, the Utilization Plan and individual DBE Participation Statements becomes part of the contract. If the Vendor did not succeed in obtaining enough DBE participation to achieve the goal, and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of DBE work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the amended contract goal. All work indicated for performance by an approved DBE shall be performed, managed, and supervised by the DBE executing the DBE Participation Commitment Statement.
   1. No amendment to the Utilization Plan may be made without prior written approval from the Department’s Bureau of Small Business Enterprises. All requests for amendment to the Utilization Plan shall be submitted to the Department of Transportation, Bureau of Small Business Enterprises, Contract Compliance Section, 2300 South Dirksen Parkway, Room 319, Springfield, Illinois 62764. Telephone number (217) 785-4611. Telefax number (217) 785-1524.
   2. The Vendor may not make changes to its contractual DBE commitments or substitute DBEs without the prior written approval of the Department. Unauthorized changes or substitutions, including performing the work designated for a DBE with the Vendor’s own forces, shall be a violation of the utilization plan and a breach of the contract, and shall be cause to terminate the contract, and/or seek other contract remedies or sanctions. The facts supporting the request for changes must not have been known nor reasonably should have been known by the parties prior to entering into the subcontract. The Vendor must negotiate with the DBE to resolve the problem. Where there has been a mistake or disagreement about the scope of work, the DBE can be substituted only where agreement cannot be reached for a reasonable price or schedule for the correct scope of work.
   3. Substitutions of a DBE shall be permitted under the following circumstances:
      1. Unavailability after receipt of reasonable notice to proceed;
      2. Failure of performance;
      3. Financial incapacity;
      4. Refusal by the DBE to honor the bid or proposal price or scope;
      5. Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;
      6. Failure of the DBE to meet insurance, licensing or bonding requirements;
      7. The DBE's withdrawal of its bid or proposal; or
      8. Decertification of the DBE.
   4. If it becomes necessary to substitute a DBE or otherwise change the Utilization Plan, the Vendor must first give notice in writing to the DBE subcontractor with a copy to the Department. The request must state specific reasons for the substitution or change. The Vendor must give the DBE five days to respond to the prime contractor’s notice and advise the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Department should not approve the contractor’s action. The Department will approve or deny a request for substitution or other change in the Utilization Plan within 5 business days of receipt of the request.
   5. Where the Vendor has established the basis for the substitution to the Department’s satisfaction, it must make good faith efforts to meet the contract goal by substituting a DBE. Documentation of a replacement vendor, or of good faith efforts to replace the DBE, must meet the requirements of the initial Utilization Plan. If the goal cannot be reached and good faith efforts have been made, the Vendor may substitute with a non-DBE.
   6. If a Vendor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Utilization Plan, the Vendor must obtain the approval of the Department to modify the Utilization Plan and must make good faith efforts to ensure that DBEs have a fair opportunity to bid on the new scope of work.
   7. A new subcontract must be executed and submitted to the Department within 5 business days of the Vendor’s receipt of the Department’s approval for the substitution or other change.
   8. The Vendor shall maintain a record of all relevant data with respect to the utilization of DBEs, including but without limitation, payroll records, invoices, canceled checks and books of account for a period of at least 5 years after the completion of the contract. Full access to these records shall be granted by the Vendor upon 48 hours written demand by the Department to any duly authorized representative thereof, or to any municipal, state or federal authorities. The Department shall have the right to obtain from the Vendor any additional data reasonably related or necessary to verify any representations by the Vendor. After the performance of the final item of work or delivery of material by a DBE and final payment to the DBE by the Vendor, but not later than 30 calendar days after such payment, the Vendor shall submit a statement confirming the final payment and the total payments made to the DBE under the contract.
   9. The Department will periodically review the Vendor’s compliance with these provisions and the terms of its contract. Without limitation, the Vendor’s failure to comply with these provisions or its contractual commitments as contained in the Utilization Plan, failure to cooperate in providing information regarding its compliance with these provisions or its Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status or eligibility of DBEs, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and entitle the Department to declare a default, terminate the contract, or exercise those remedies provided for in the contract or at law or in equity.
   10. The Department reserves the right to withhold payment to the Vendor to enforce these provisions and the Vendor’s contractual commitments. Final payment shall not be made on the contract until the Vendor submits sufficient documentation demonstrating compliance with its Utilization Plan.
   11. **UTILIZATION PLAN**

**The Utilization Plan consists of two parts. Part I, Utilization Plan Commitment Statement, must be submitted with the offer packet. Part II,**  **Utilization of DBEs and Letter(s) of Intent for each DBE must be submitted prior to final selection.**

* + 1. Part I – Utilization Commitment Statement

Click here to enter text submits the following Utilization Plan as part of our proposal in accordance with the requirements of the Disadvantaged Business Enterprises Participation section of the solicitation of Click here to enter text, Procurement Reference Number Click here to enter text. We understand that compliance with this section is an essential part of this contract and that the Utilization Plan will become a part of the contract, if awarded.

Click here to enter text makes the following assurance and agrees to include the assurance in each subcontract with a subcontractor or supplier utilized on this contract: We shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. Failure to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems appropriate.

Vendor’s person responsible for compliance:

Name:

Title: Click here to enter text

Telephone: Click here to enter text

Email: Click here to enter text

We submit one (1) of the following statements:

We are a DBE and plan to fully meet the DBE contract goal through self-performance.

We plan to meet the DBE contract goal of Click here to enter text % through subcontracting or by documenting Good Faith Efforts.

* + 1. Part II - Utilization of DBEs and Letter(s) of Intent

Please submit a separate Part II for **each** proposed DBE. To achieve the DBE contract goal through subcontracting, the following is proposed:

* + - 1. The DBE’s company name, address and phone number:

Name: Click here to enter text

Address: Click here to enter text

Phone Number: Click here to enter text

At the time of submission, the above certified vendor is:

Certified as a DBE with one of the Illinois Unified Certification Program agencies (IDOT, Pace, Metra, Chicago Transit Authority, or City of Chicago).

* + - 1. A detailed description of the commercially useful work to be done by this DBE and its relevant NAICS codes are as follows Click here to enter text
      2. Check one of the following:

A notarized signed letter of intent between Click here to enter text and Click here to enter textdetailing the work to be performed by the DBE and the agreed upon rates or prices, conforming to the Utilization Plan is included.

A joint venture agreement between Click here to enter text and Click here to enter text is included in lieu of the letter of intent.

* + - 1. The Vendor has not prohibited or otherwise limited Click here to enter text from providing subcontractor quotes to other potential bidders/vendors.
    1. Demonstration of Good Faith Efforts to Achieve DBE contract goal.

If the DBE participation goal was not achieved, the documented Good Faith Efforts must be submitted prior to final selection (or as otherwise specified by IDOT). **Failure to do so may render the Vendor’s solicitation response non-responsive and cause it to be rejected, or render the Vendor ineligible for contract award, at IDOT’s sole discretion**.

* + 1. If it is determined that the apparent successful Vendor has failed to meet the requirements of Sec. 7, the Vendor may request administrative reconsideration within the five working days after receipt of the notification of the determination pursuant to Sec. 7.17.

7.11.4 Letter of Intent (LOI) Between Prime Vendor and Certified Vendor

Instructions:The responsive Vendor is required to submit this signed and notarized Letter of Intent from each DBE identified on the Utilization Plan. LOIs must be submitted with the proposal and must be notarized by both parties. Submit a separate LOI for each proposed DBE. The amount and scope of work indicated on each LOI shall be the actual amount indicated on the Utilization Plansubmitted with the proposal and approved by the Department.

Changes to the Utilization Plan including substitution of DBEs are permitted only after award of the contract and only with prior written approval of the Department. under the terms of Sec. 7.4. A request for changes to the Utilization Plan must be submitted for all levels of subcontracting. LOIs must be submitted for all additions of DBEs to the Utilization Plan prior to the start of work.

Project Name: Click here to enter text

Project/Solicitation Number: Click here to enter text

Name of Prime Vendor: Click here to enter text

Address: Click here to enter text

City, State and Zip: Click here to enter text

Telephone: Click here to enter text Fax: Click here to enter text

Email: Click here to enter text

Name of DBE: Click here to enter text

Address: Address: Click here to enter text

City, State and Zip: Click here to enter text

Telephone: Click here to enter text Fax: Click here to enter text

Email: Click here to enter text

Type of agreement:  Services  Supplies Both Supplies /Services

Type of payment:  Lump Sum Click here to enter text

Hourly Rate: Click here to enter text

Unit Price: Click here to enter text

Period of Performance: Click here to enter text

Proposed Subcontract Amount $ Click here to enter text or Proposed % of Contract Click here to enter text

Description of work to be performed by DBE: Click here to enter text

List the governmental agency with whom the DBE is currently certified as a Disadvantaged, minority, or woman business enterprise: Click here to enter text

The prime vendor and the DBE above hereby agree that upon the execution of a contract for the above-named project between the prime vendor and the State of Illinois, the DBE will perform the scope of work for the price as indicated above.

Prime Vendor (Company Name and D/B/A): DBE (Company Name and D/B/A):

Click here to enter text Click here to enter text

Signature Signature

Printed Name: Click here to enter text Printed Name: Click here to enter text

Title: Click here to enter text Title: Click here to enter text

Date: Click here to enter text Date: Click here to enter text

Subscribed and sworn before me this Subscribed and sworn before me this

day of , 20 day of , 20

Notary Public Notary Public

My Commission expires: My Commission expires: