

ADDENDUM NO. 1

June 13, 2017

Attention All Bidders and Plan Holders:

Jackson Highway Rehabilitation Project
Federal Aid Project No. STPUS-5667(004)
F.A. Contract No. TA-6045
CRP 2175D

The following shall be deleted and replaced with attached:

Starting on page 86 of the Special Provisions, delete 1-07.11 Requirements for Nondiscrimination, (August 15, 2016 APWA GSP, Option B) which states 9% goals and replace with attached (June 1, 2017) Disadvantaged Business Enterprise Participation WSDOT GSP which states No DBE goals and includes (June 1, 2017) Small Business Enterprise Participation WSDOT GSP.

The following shall be deleted in Appendix C of the Contract (Pages 157-162):

Disadvantaged Business Enterprise Utilization Certification

Disadvantaged Business Enterprise (DBE) Written Confirmation Document

All bidders will be required to furnish evidence of the receipt of this addendum on the Proposal Signature page. This addendum will be incorporated in and made a part of the contract when awarded, and when formally executed.

END OF ADDENDUM NO. 1

Tim Fife, P.E.
Assistant County Engineer

1 (June 1, 2017)

2 **Disadvantaged Business Enterprise Participation**

3 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and
4 USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract. As such,
5 the requirements of this Contract are to make affirmative efforts to solicit DBEs, provide
6 information on who submitted a Bid or quote and to report DBE participation monthly as
7 described elsewhere in these Contract Provisions. No preference will be included in the
8 evaluation of Bids/Proposals, no minimum level of DBE participation shall be required as a
9 Condition of Award and Bids/Proposals may not be rejected or considered non-responsive
10 on that basis.

11
12 **DBE Abbreviations and Definitions**

13 **Broker** – A business firm that provides a bona fide service, such as professional,
14 technical, consultant or managerial services and assistance in the procurement of
15 essential personnel, facilities, equipment, materials, or supplies required for the
16 performance of the Contract, or, persons/companies who arrange or expedite
17 transactions.

18
19 **Certified Business Description** – Specific descriptions of work the DBE is
20 certified to perform, as identified in the Certified Firm Directory, under the Vendor
21 Information page.

22
23 **Certified Firm Directory** – A database of all Minority, Women, and Disadvantaged
24 Business Enterprises. The on-line Directory is available to Contractors for their use
25 in identifying and soliciting interest from DBE firms. The database is located under
26 the Firm Certification section of the Diversity Management and Compliance
27 System web page at: <https://wsdot.diversitycompliance.com>.

28
29 **Commercially Useful Function (CUF)**

30 49 CFR 26.55(c)(1) defines commercially useful function as: “A DBE performs a
31 commercially useful function when it is responsible for execution of the work of the
32 contract and is carrying out its responsibilities by actually performing, managing,
33 and supervising the work involved. To perform a commercially useful function, the
34 DBE must also be responsible, with respect to materials and supplies used on the
35 contract, for negotiating price, determining quality and quantity, ordering the
36 material, and installing (where applicable) and paying for the material itself. To
37 determine whether a DBE is performing a commercially useful function, you must
38 evaluate the amount of work subcontracted, industry practices, whether the
39 amount the firm is to be paid under the contract is commensurate with the work it
40 is actually performing and the DBE credit claimed for its performance of the work,
41 and other relevant factors.”

42
43 **Contract** – For this Special Provision only, this definition supplements Section 1-
44 01.3. 49 CFR 26.5 defines contract as: “... a legally binding relationship obligating
45 a seller to furnish supplies or services (including, but not limited to, construction
46 and professional services) and the buyer to pay for them. For purposes of this part,
47 a lease is considered to be a contract.”

48
49 **Manufacturer (DBE)** – A DBE firm that operates or maintains a factory or
50 establishment that produces on the premises the materials, supplies, articles, or
51 equipment required under the Contract. A DBE Manufacturer shall produce
52 finished goods or products from raw or unfinished material or purchase and
53 substantially alters goods and materials to make them suitable for construction use
54 before reselling them.
55

1 **Regular Dealer (DBE)** – A DBE firm that owns, operates, or maintains a store,
2 warehouse, or other establishment in which the materials or supplies required for
3 the performance of a Contract are bought, kept in stock, and regularly sold to the
4 public in the usual course of business. To be a Regular Dealer, the DBE firm must
5 be an established regular business that engages in as its principal business and in
6 its own name the purchase and sale of the products in question. A Regular Dealer
7 in such items as steel, cement, gravel, stone, and petroleum products need not
8 own, operate or maintain a place of business if it both owns and operates
9 distribution equipment for the products. Any supplementing of regular dealers' own
10 distribution equipment shall be by long-term formal lease agreements and not on
11 an ad-hoc basis. Brokers, packagers, manufacturers' representatives, or other
12 persons who arrange or expedite transactions shall not be regarded as Regular
13 Dealers within the meaning of this definition.
14

15 **DBE Goals**

16 No DBE goals have been assigned as part of this Contract.
17

18 **Affirmative Efforts to Solicit DBE Participation**

19 The Contractor shall not discriminate on the grounds of race, color, sex, national origin,
20 age, or disability in the selection and retention of subcontractors, including procurement
21 of materials and leases of equipment. DBE firms shall have an equal opportunity to
22 compete for subcontracts in which the Contractor enters into pursuant to this Contract.
23

24 Contractors are encouraged to:

- 25
- 26 1. Advertise opportunities for Subcontractors or suppliers in a timely and
27 reasonably designed manner to provide notice of the opportunity to DBEs
28 capable of performing the Work. All advertisements should include a Contract
29 Provision encouraging participation by DBE firms. This may be accomplished
30 through general advertisements (e.g. newspapers, journals, etc.) or by
31 soliciting Bids/Proposals directly from DBEs.
32
- 33 2. Establish delivery schedules that encourage participation by DBEs and other
34 small businesses.
35
- 36 3. Participate with a DBE as a joint venture.
37

38 **DBE Eligibility/Selection of DBEs for Reporting Purposes Only**

39 Contractor may take credit for DBEs utilized on this Contract only if the firm is certified
40 for the Work being performed, and the firm performs a commercially useful function
41 (CUF).
42

43 Absent a mandatory goal, all DBE participation that is attained on this project will be
44 considered as "race neutral" participation and shall be reported as such.
45

46 DBE participation is only credited upon payment to the DBE.
47

48 **Crediting DBE Participation**

49 All DBE Subcontractors shall be certified before the subcontract on which they are
50 participating is executed.
51

52 Be advised that although a firm is listed in the directory, there are cases where the
53 listed firm is in a temporary suspension status. The Contractor shall review the
54 OMWBE Suspended DBE Firms list. A DBE firm that is included on this list may not
55 enter into new contracts that count towards participation.
56

1 The following are some definitions of what may be counted as DBE participation.

2
3 **DBE Prime Contractor**

4 Only take credit for that portion of the total dollar value of the Contract equal to the
5 distinct, clearly defined portion of the Work that the DBE Prime Contractor
6 performs with its own forces and is certified to perform.

7
8 **DBE Subcontractor**

9 Only take credit for that portion of the total dollar value of the subcontract equal to
10 the distinct, clearly defined portion of the Work that the DBE performs with its own
11 forces. The value of work performed by the DBE includes the cost of supplies and
12 materials purchased by the DBE and equipment leased by the DBE, for its work on
13 the contract. Supplies, materials or equipment obtained by a DBE that are not
14 utilized or incorporated in the contract work by the DBE will not be eligible for DBE
15 credit.

16
17 The supplies, materials, and equipment purchased or leased from the Contractor
18 or its affiliate, including any Contractor's resources available to DBE
19 subcontractors at no cost, shall not be credited.

20
21 DBE credit will not be given in instances where the equipment lease includes the
22 operator. The DBE is expected to operate the equipment used in the performance
23 of its work under the contract with its own forces. Situations where equipment is
24 leased and used by the DBE, but payment is deducted from the Contractor's
25 payment to the DBE is not allowed.

26
27 If a DBE subcontracts a portion of the Work of its contract to another firm, the
28 value of the subcontracted Work may be credited only if the DBE's Lower-Tier
29 Subcontractor is also a DBE. Work subcontracted to a non-DBE shall not be
30 credited.

31
32 Count expenditures toward race/gender-neutral participation only if the DBE is
33 performing a CUF on the contract.

34
35 **DBE Subcontract and Lower Tier Subcontract Documents**

36 There must be a subcontract agreement that complies with 49 CFR Part 26 and
37 fully describes the distinct elements of Work committed to be performed by the
38 DBE. The subcontract agreement shall incorporate requirements of the primary
39 Contract. Subcontract agreements of all tiers, including lease agreements shall be
40 readily available at the project site for the Engineer review.

41
42 **DBE Service Provider**

43 The value of fees or commissions charged by a DBE Broker, a DBE behaving in a
44 manner of a Broker, or another service provider for providing a bona fide service,
45 such as professional, technical, consultant, managerial services, or for providing
46 bonds or insurance specifically required for the performance of the contract will
47 only be credited as DBE participation, if the fee/commission is determined by the
48 Contracting Agency to be reasonable and the firm has performed a CUF.

49
50 **Temporary Traffic Control**

51 If the DBE firm is being utilized in the capacity of only "Flagging", the DBE firm
52 must provide a Traffic Control Supervisor (TCS) and flagger, which are under the
53 direct control of the DBE. The DBE firm shall also provide all flagging equipment
54 (e.g. paddles, hard hats, and vests).

55

1 If the DBE firm is being utilized in the capacity of "Traffic Control Services", the
2 DBE firm must provide a TCS, flaggers, and traffic control items (e.g., cones,
3 barrels, signs, etc.) and be in total control of all items in implementing the traffic
4 control for the project. In addition, if the DBE firm utilizes the Contractor's
5 equipment, such as Transportable Attenuators and Portable Changeable Message
6 Signs (PCMS) no DBE credit can be taken for supplying and operating the items.
7

8 **Trucking**

9 DBE trucking firm participation may only be credited as DBE participation for the
10 value of the hauling services, not for the materials being hauled unless the trucking
11 firm is also certified as a supplier. In situations where the DBE's work is priced per
12 ton, the value of the hauling service must be calculated separately from the value
13 of the materials in order to determine DBE credit for hauling.
14

15 The DBE trucking firm must own and operate at least one licensed, insured and
16 operational truck on the contract. The truck must be of the type that is necessary to
17 perform the hauling duties required under the contract. The DBE receives credit for
18 the value of the transportation services it provides on the Contract using trucks it
19 owns or leases, licenses, insures, and operates with drivers it employs.
20

21 The DBE may lease additional trucks from another DBE firm. The Work that a DBE
22 trucking firm performs with trucks it leases from other certified DBE trucking firms
23 qualify for 100% DBE credit
24

25 The trucking Work subcontracted to any non-DBE trucking firm will not receive
26 credit for Work done on the project. The DBE may lease trucks from a non-DBE
27 truck leasing company, but can only receive credit as DBE participation if the DBE
28 uses its own employees as drivers.
29

30 DBE credit for a truck broker is limited to the fee/commission that the DBE
31 receives for arranging transportation services.
32

33 Truck registration and lease agreements shall be readily available at the project
34 site for the Engineer review.
35

36 **DBE Manufacturer and DBE Regular Dealer**

37 One hundred percent (100%) of the cost of the manufactured product obtained
38 from a DBE Manufacturer can count as DBE participation.
39

40 Sixty percent (60%) of the cost of materials or supplies purchased from a DBE
41 Regular Dealer may be credited as DBE participation. If the role of the DBE
42 Regular Dealer is determined to be that of a pass-through, then no DBE credit will
43 be given for its services. If the role of the DBE Regular Dealer is determined to be
44 that of a Broker, then DBE credit shall be limited to the fee or commission it
45 receives for its services. Regular Dealer status and the amount of credit is
46 determined on a Contract-by-Contract basis.
47

48 Regular Dealer DBE firms must be approved before being used on a project. The
49 WSDOT Approved Regular Dealer list published on WSDOT's Office of Equal
50 Opportunity (OEO) web site must include the specific project for which approval is
51 being requested. The Regular Dealer must submit the Regular Dealer Status
52 Request form a minimum of five days prior to being utilized on the specific project.
53

54 Purchase of materials or supplies from a DBE which is neither a manufacturer nor
55 a regular dealer, (i.e. Broker) only the fees or commissions charged for assistance
56 in the procurement of the materials and supplies, or fees or transportation charges

1 for the delivery of materials or supplies required on a job site, can count as DBE
2 participation provided the fees are not excessive as compared with fees
3 customarily allowed for similar services. Documentation will be required to support
4 the fee/commission charged by the DBE. The cost of the materials and supplies
5 themselves cannot be counted toward as DBE participation.
6

7 Note: Requests to be listed as a Regular Dealer will only be processed if the
8 requesting firm is a material supplier certified by the Office of Minority and
9 Women's Business Enterprises in a NAICS code that falls within the
10 42XXXX NAICS Wholesale code section.
11

12 **Procedures Between Award and Execution**

13 After Award and prior to Execution, the Contractor shall provide the additional
14 information described below. Failure to comply shall result in the forfeiture of the
15 Bidder's Proposal bond or deposit.
16

- 17 1. A list of all firms who submitted a bid or quote in attempt to participate in this
18 project whether they were successful or not. Include the business name and
19 mailing address.
20

21 Note: The firms identified by the Contractor may be contacted by the
22 Contracting Agency to solicit general information as follows: age of
23 the firm and average of its gross annual receipts over the past
24 three-years.
25

26 **Procedures After Execution**

27 **Commercially Useful Function (CUF)**

28 The Contractor may only take credit for the payments made for Work performed by
29 a DBE that is determined to be performing a CUF. Payment must be
30 commensurate with the work actually performed by the DBE. This applies to all
31 DBEs performing Work on a project, whether or not the DBEs are COA, if the
32 Contractor wants to receive credit for their participation. The Engineer will conduct
33 CUF reviews to ascertain whether DBEs are performing a CUF. A DBE performs a
34 CUF when it is carrying out its responsibilities of its contract by actually performing,
35 managing, and supervising the Work involved. The DBE must be responsible for
36 negotiating price; determining quality and quantity; ordering the material, installing
37 (where applicable); and paying for the material itself. If a DBE does not perform
38 "all" of these functions on a furnish-and-install contract, it has not performed a CUF
39 and the cost of materials cannot be counted toward UDBE COA Goal. Leasing of
40 equipment from a leasing company is allowed. However, leasing/purchasing
41 equipment from the Contractor is not allowed. Lease agreements shall be readily
42 available for review by the Engineer.
43

44 In order for a DBE traffic control company to be considered to be performing a
45 CUF, the DBE must be in control of its work inclusive of supervision. The DBE
46 shall employ a Traffic Control Supervisor who is directly involved in the
47 management and supervision of the traffic control employees and services.
48

49 The DBE does not perform a CUF if its role is limited to that of an extra participant
50 in a transaction, contract, or project through which the funds are passed in order to
51 obtain the appearance of DBE participation.
52

53 The following are some of the factors that the Engineer will use in determining
54 whether a DBE trucking company is performing a CUF:
55

- The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on the Contract. The owner demonstrates business related knowledge, shows up on site and is determined to be actively running the business.
- The DBE shall with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract. The drivers of the trucks owned and leased by the DBE must be exclusively employed by the DBE and reflected on the DBE's payroll.
- Lease agreements for trucks shall indicate that the DBE has exclusive use of and control over the truck(s). This does not preclude the leased truck from working for others provided it is with the consent of the DBE and the lease provides the DBE absolute priority for use of the leased truck.
- Leased trucks shall display the name and identification number of the DBE.

Joint Checking

A joint check is a check between a Subcontractor and the Contractor to the supplier of materials/supplies. The check is issued by the Contractor as payer to the Subcontractor and the material supplier jointly for items to be incorporated into the project. The DBE must release the check to the supplier, while the Contractor acts solely as the guarantor.

A joint check agreement must be approved by the Engineer and requested by the DBE involved using the DBE Joint Check Request Form (form # 272-053) prior to its use. The form must accompany the DBE Joint Check Agreement between the parties involved, including the conditions of the arrangement and expected use of the joint checks.

The approval to use joint checks and the use will be closely monitored by the Engineer. To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing and paying for the material itself." The Contractor shall submit DBE Joint Check Request Form for the Engineer approval prior to using a joint check.

Material costs paid by the Contractor directly to the material supplier is not allowed. If proper procedures are not followed or the Engineer determines that the arrangement results in lack of independence for the DBE involved, no DBE credit will be given for the DBE's participation as it relates to the material cost.

Prompt Payment

Prompt payment to all subcontractors shall be in accordance with Section 1-08.1. Prompt Payment requirements apply to progress payments as well as return of retainage.

Reporting

The Contractor and all subcontractors/suppliers/service providers that utilize DBEs to perform work on the project, shall maintain appropriate records that will enable the Engineer to verify DBE participation throughout the life of the project.

Refer to Section 1-08.1 for additional reporting requirements associated with this Contract.

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Decertification

When a DBE is “decertified” from the DBE program during the course of the Contract, the participation of that DBE shall continue to count as DBE participation as long as the subcontract with the DBE was executed prior to the decertification notice. The Contractor is obligated to substitute when a DBE does not have an executed subcontract agreement at the time of decertification.

Consequences of Non-Compliance

Each contract with a Contractor (and each subcontract the Contractor signs with a Subcontractor) must include the following assurance clause:

The Contractor, subrecipient, or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor 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 recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible.

Payment

Compensation for all costs involved with complying with the conditions of this Specification and any other associated DBE requirements is included in payment for the associated Contract items of Work, except otherwise provided in the Specifications.

(June 1, 2017)

Small Business Enterprise Participation

The Small Business Enterprise (SBE) Program is an element of the Disadvantaged Business Enterprise (DBE) Program in accordance with the requirements of 49 CFR Part 26.39. As such, the requirements of this contract establish affirmative efforts to utilize SBE certified firms on construction projects. No preference will be included in the evaluation of Bids/Proposals. No minimum level of SBE participation shall be required as a Condition of Award and Bids/Proposals may not be rejected or considered non-responsive on that basis.

Voluntary SBE Goals

A voluntary goal amount of ten percent of the Contract bid amount is established.

The goal is voluntary, but achievement of the goal is encouraged. No preference will be included in the evaluation of bids/proposals. Bidders may contact the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) at 360-664-9750 or visit www.omwbe.wa.gov to obtain information on certified SBE firms.

Required SBE Participation Plan

The Contractor shall submit a SBE Participation Plan prior to commencing contract work. Although the goal is voluntary, the outreach efforts to provide SBE maximum practicable opportunities are not.

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For SBE Participation Plan Drafting Guidelines, please visit:

www.wsdot.wa.gov/equalopportunity.

Prompt Payment

Prompt payment to all subcontractors shall be in accordance with Section 1-08.1. Prompt payment requirements apply to progress payments as well as return of retainage.

Required SBE Reporting

The Contractor and all subcontractors/suppliers/service providers that utilize DBEs to perform work on the project, shall maintain appropriate records that will enable the Engineer to verify DBE participation throughout the life of the project.

Refer to Section 1-08.1 for additional reporting requirements associated with this contract.

Definitions

Regardless of race or gender, a SBE is one certified by OMWBE as such, where the firm's:

- Three year averaged gross receipts are less than \$22.41 million dollars, with smaller industry standards applicable
- Is at least 51% owned and controlled by an individual or individuals with a personal net worth less than \$1.32 million dollars
- A Micro Small Business Enterprise is a firm certified as an SBE with average gross receipts for three years less than one million dollars