

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
RACE- AND GENDER-NEUTRAL DBE CONTRACT CLAUSE
(For Non-Negotiated Contracts) Low Bid**

APPLICABILITY – *For the purposes of this contract clause, a “Non-Negotiated Contract” is a contract that is procured as an Invitation for Bid (low-bid) or a Two-Step Design-Build project. This contract clause shall be included in both the solicitation and contract documents for these projects.*

SECTION I. DEFINITIONS

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 CFR Part 26. The official DBE database containing eligible DBE firms certified by the AZUCP can be accessed at: <http://www.azdbe.org>.

Bidder is an individual, partnership, joint venture, corporation or firm submitting a submittal to the City to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

Broker, Packager, Manufacturers’ Representative, or Jobber means a firm that is not a manufacturer or regular dealer as defined herein.

Commercially Useful Function means that a DBE firm 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. A DBE must perform at least 30 percent of the total cost of its contract with its own work force in order to be determined to be performing a commercially useful function on the contract.

Contract is a written agreement obligating the seller or business enterprise to furnish goods or services as submitted and the Purchaser or Buyer to pay for such goods or services.

DBE Joint Venture is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. One participant in the joint venture arrangement must hold DBE status with the City of Phoenix (City) or AZUCP. The joint venture is limited in scope and duration to this contract. The resources, assets and labor of the partnering participants must be combined in an effort to accrue profit.

Disadvantaged Business Enterprise (DBE) means a small business concern that has successfully completed the DBE certification process and been granted DBE status by the City’s Equal Opportunity Department (EOD) or another member of the Arizona Unified Certification Program (AZUCP) pursuant to the criteria contained in 49 Code of Federal Regulation (CFR) Part 26.

Economically Disadvantaged Individuals means those individuals who have a personal net worth of less than \$1,320,000, not including the value of the equity interest in their personal residence or the value of their ownership interest in the firm seeking certification as a DBE.

Joint Venture (JV) is an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this contract. The resources, assets and labor of the participants must be combined in an effort to accrue profit.

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract.

Outreach Efforts means the demonstrated efforts to solicit participation from interested and qualified DBEs and small businesses. Each Bidder must document their identification of potential opportunities, the solicitations, negotiations, and communications of their selections relative to Outreach.

Purchaser for purposes of this contract means the City.

Race- and Gender-Neutral (RGN) Measures – Steps taken that result in DBE utilization absent a Race- and Gender-Conscious Goal.

Race- and Gender-Neutral (RGN) Participation - DBE utilization that occurs on a project with RGN measures.

Regular Dealer or Supplier means a business 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 are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

Small Business Concern means a small business with gross receipts or number of employees consistent with the U.S. Small Business Administration's definition of a small business, subject to further limitations as defined in 49 CFR Part 26.

Socially Disadvantaged Individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Membership in one of the above mentioned groups does not qualify the firm to be considered a DBE for purposes of this contract. Only firms that have completed a DBE certification process and been granted DBE status by the City or AZUCP shall be considered socially and economically disadvantaged individuals for the purpose of this contract.

Subcontract is a contract at any tier below the prime contract, including purchase orders.

Subcontractor is an individual, partnership, joint venture, corporation or firm that holds a contract at any tier below the prime contract, including purchase orders.

Successful Bidder is a Bidder who has been selected to perform services requested by a solicitation or procurement.

SECTION II. GENERAL REQUIREMENTS

- A. **For this business opportunity, the City has not established a race-and gender-conscious DBE participation goal.** The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The City supports the use of race- and gender-neutral measures to facilitate participation by DBEs and other small businesses, and encourages Bidders to subcontract portions of their work that they might otherwise perform with their own forces.
- B. **Applicable Federal Regulations** – This contract is subject to the DBE Program requirements issued by the U.S. Department of Transportation (USDOT) as set forth in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this contract, the City is required to track and report DBE participation that occurs as a result of any procurement, JV, goods/services or other arrangement involving a DBE, creating an obligation for the Successful Bidder to provide all relevant information to allow such reporting to occur.
- C. **DBE Certification** - ONLY firms certified by the City of Phoenix (City) or another member of the AZUCP are eligible for counting toward the DBE utilization on this contract.
- D. **Nondiscrimination Clause** - The City, as a recipient of federal U.S. Department of Transportation (USDOT) funding, has agreed to abide by the assurance found in 49 CFR Part 26.13(a). As a condition of this agreement, the City shall require each contract signed by the City with the

Successful Bidder, and each subcontract signed by the Successful Bidder with a subcontractor, to include the following assurance:

“The contractor, subcontractor, or sub-recipient 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 USDOT-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 and/or any other such remedy as the City deems appropriate.”

Note: For the purposes of the required contract and subcontract language above, the Successful Bidder is the “contractor”, and the City is the “sub-recipient.”

SECTION III. BID REQUIREMENTS

- A. **Responsiveness to Outreach Requirements** – Any Bidder wishing to remain in competition for contract award shall provide the minimum required information due **at time of bid and within three business days of submittal deadline**. This minimum requirement is the submission of **Attachments A and B**, as detailed in Part B below. Failure to submit the Outreach documentation in a timely manner as herein set forth will result in a determination by the City that the Bidder is non-responsive to the Outreach Requirements.
- B. **Submittal of Outreach Efforts Documentation** – A summary of the Outreach Requirements are listed below.

Outreach Requirements	
1.	Identify business opportunities that small businesses can perform as partners or as suppliers of goods and services
2.	Broadly solicit proposals for business opportunities from small businesses
3.	Negotiate with small businesses
4.	Communicate outcomes with all firms interested in the business opportunities

DUE AT TIME OF BID: *Items 1 and 2* of the Outreach Requirements above must be fulfilled with completion of **Columns A through D of Attachment A** and submitted along with Supporting Documentation as prescribed in *Section 1* below.

DUE WITHIN THREE BUSINESS DAYS FOLLOWING BID SUBMITTAL DEADLINE: *Items 3 and 4* of the Outreach Requirements above must be fulfilled with the completion of **Columns E and F of Attachment A** and submitted along with Supporting Documentation as prescribed in *Section 2* below. The **Small Business Utilization Commitment (Attachment B)** form must be completed, signed, and returned as prescribed in *Section 3* below.

Failure to submit the required forms and supporting documentation in a timely manner will result in a determination by the City that the Bidder is non-responsive to the Outreach Requirements.

1. Attachment A, Columns A through D (Due at Time of Bid): List all subcontractors and suppliers that responded to the Bidder in the preparation of its bid submittal. This information serves to document the above Outreach Requirement factors and shall be illustrative of the matters EOD will consider in determining whether the Bidders demonstrated Outreach Efforts.

Provide **Supporting Documentation** to support information reported on **Columns C and D of Attachment A**. This documentation should include the type and/or description of the potential opportunities identified for small business participation (*Column C*). A copy of the solicitation notice that was provided to interested small businesses (*Column D*). This notice may be in the form of a

letter, phone call, attachment to an email, advertisement in newspapers, trade papers, or communication with chambers of commerce.

2. Attachment A, Columns E and F (Due within three business days following bid submittal deadline): The final aspects of demonstrated Outreach Efforts include Negotiation with Small Businesses (*Column E*) and Communication of Selection Outcomes (*Column F*) to potential participants. For all of the above, if an email or fax format is used, the documentation provided must reflect a listing of all email addresses or fax numbers to which the solicitation was sent and the date and time of the transmission. Additionally, if contacts are made by telephone, the Bidder must document the name of the person representing the Bidder and of the person representing the small business.

In the event the City requests clarification of submitted materials from a Bidder, the Bidder must acknowledge the request within 24 hours and provide clarification to the City within three business days to remain responsive to the Outreach Requirements.

3. Attachment B, Small Business Utilization Commitment (Due within three business days following bid submittal deadline): Bidders must provide a signed affidavit indicating that the information submitted is true and correct as to the following:

- a) The firms indicated as selected in **Attachment A** will participate in the contract; and
- b) The Bidder will comply with Outreach Requirements for RGN Contracts for substitution.
- c) The Submitter understands and agrees that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- d) The proposed total small business participation percentage is true and correct.

Failure to submit a completed copy of Attachments A, Attachment B, and supporting documentation for Attachment A will result in a determination by the City's Equal Opportunity Department (EOD) that the Submitter is non-responsive with the requirements for this contract established under 49 CFR Part 26.

Administrative Reconsideration – In the event City determines the Bidder failed to submit required documentation to meet the stated Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification on documentation submitted.

If the Bidder wishes to request reconsideration of the determination of non-responsive based on insufficient demonstration of Outreach Efforts, written notice must be submitted to the City within three business days of the City's non-responsive notification to the Bidder. The request for reconsideration should be made to:

City of Phoenix Equal Opportunity Department
Business Relations Division-Contract Compliance Section
251 West Washington Street, Seventh Floor
Phoenix, AZ 85003

SECTION IV. POST-AWARD COMPLIANCE REQUIREMENTS

- A. **Subcontracting Commitment** – Copies of any executed contracts, procurements, purchase orders, subleases, JV, goods/services or other arrangement legalizing the agreement between the Successful Bidder and any DBE or small business will be required.

DBE Subcontracts shall not be terminated, nor shall the scope of work be altered, without prior written notice and the approval of EOD. The amount of the subcontract shall also not be revised to a lower amount than was stated in the submitted documents without prior written approval of EOD.

Any petition to alter the original committed subcontract with a DBE must be submitted in writing to EOD prior to such change occurring. Failure to do so may result in the Successful Bidder being declared in breach of the contract and noncompliant.

- B. **Relief From Proposed DBE Utilization** – After contract award, no relief from the proposed DBE utilization will be granted except in exceptional circumstances. Requests for relief from any or all of the DBE participation must be in writing to EOD. EOD has the final authority to determine if the request will be granted.

The written request must contain the amount of the relief being sought, the evidence that demonstrates why the relief is necessary, and any additional relevant information to be considered by EOD. All records of the Successful Bidder's attempts to subcontract with the DBE firm and any other actions taken to locate and solicit a replacement DBE must be included with the request.

If an approved DBE allows their DBE status to expire or their DBE certification is removed during the course of the subcontract, the City will consider all work performed by the DBE under the original contract to count towards meeting the DBE RGN efforts. No increased scopes of work negotiated after removal/expiration of the DBE firm's certification will be counted nor will any work performed under a contract extension granted by the City be counted towards meeting the DBE RGN efforts.

- C. **DBE Substitutions** – In instances where the subcontractor was approved as a bona fide DBE by the City and the firm subsequently loses its DBE status prior to the execution of a contract, EOD will consider whether or not good faith efforts were made to find and substitute the firm with a certified DBE. The Successful Bidder must notify EOD in writing of the necessity to substitute a DBE and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE must not occur before EOD's written approval is obtained.

- D. **Prompt Payment of Subcontractors** – In accordance with the Arizona Revised Statutes, Section 34-221(G), the City's solicitation and/or contract documents, the Successful Bidder is required to promptly pay its subcontractors, sub consultants, or suppliers within seven calendar days of receipt of each progress payment from the City. No contract terms and conditions between the Successful Bidder and its subcontractors, sub consultants, or suppliers may alter the rights of any Subcontractor, sub consultant, or supplier to receive prompt and timely payment as provided herein.

Any reduction of retention by the City to the Successful Bidder shall result in a corresponding reduction to subcontractors or suppliers who have performed satisfactory work. The prompt payment provisions of 49 CFR Part 26 also require the Successful Bidder to ensure the prompt and full payment of retainage monies to subcontractors or sub consultants at such time as the work of the subcontractor or sub consultant is complete and the City has accepted the work and paid the Successful Bidder for the work performed and accepted. Retention shall be paid no later than 30 days after such payment is issued by the City.

Any diversion by the Successful Bidder of payments received for work performed on the contract, or failure to reasonably account for the application or use of such payments, constitutes grounds for a declaration of breach of the contract with the City. If the Successful Bidder fails to make payments in accordance with these provisions, the City may take any one or more of the following actions, and the Successful Bidder agrees that the City may take such actions:

- Hold the Successful Bidder in default under this contract
- Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions
- Reject all future bids from the Successful Bidder for a period not to exceed one year from substantial completion date of this contract

- Terminate the contract

Nothing in this section negates the rights of the Successful Bidder to carry out the terms and conditions of its contract with the subcontractor or sub-consultant as it relates to monies owed by the subcontractor or sub-consultant for late performance, claims, and other conditions that may exist.

SECTION V. RECORD & REPORTING REQUIREMENTS

- A. During the performance of the contract, the Successful Bidder shall keep such records as are necessary to document its subcontracting participation. The records shall be provided to EOD within three business days of notification by the City and at the completion of the contract. Reports shall be in such form, manner, and content as prescribed by the City. These record requests include, but are not limited to:
1. A complete listing of all subcontractors and suppliers on the project
 2. The scopes of work being performed by each subcontractor
 3. The dollar value of all subcontracting work, services, and procurements
 4. Copies of all executed subcontracts or invoices
- B. **Monthly Reporting** – During the course of the contract, an up-to-date “Procurement Report for All Subcontractors/ Sub consultants” (**Attachment C**) must be submitted to the City with each Request for Payment submitted by the Successful Bidder.
- C. **Closeout Reporting** – Nearing completion of the contract, the Successful Bidder shall submit a final “Procurement Report for All Subcontractors/ Sub consultants” (**Attachment C**) and “Certification of Payment to DBE Firms” (**Attachment D**) to EOD. These forms are to be completed and signed by a duly authorized agent of the Successful Bidder, and all DBE firms must verify they have received payment in full from the Successful Bidder. The Equal Opportunity Department will authorize the processing of the Final Payment once all documents are received and verified.

ATTACHMENT A
DOCUMENTATION OF OUTREACH EFFORTS
(Non-Negotiated/Low Bid Contracts)

Project Title/Number:		Phone Number:		Point of Contact Name:	
Bidder's Name:		City:	State:	Zip:	Fax Number:
Mailing Address:		E-mail Address:			

(A) List of Firms that Responded to Outreach Efforts	(B) Business Status	(C) Scope of Work Solicited	(D) Solicitation Method	(E) Was This Firm Selected as a Participant?	(F) Communication of Selection Outcome
<p>Columns A, B, C, & D must be completed and submitted along with supporting documentation at time of bid. Solicitation Method: Documentation of notice of Bidder's interest in receiving sub-bids for specified scopes of work/services related to this contract opportunity. Supporting documentation may be in the form of advertisements in newspapers or websites, pamphlets handed out at outreach events, a copy of communication sent to organizations requesting assistance in recruiting small businesses, and/or emails sent to solicit potential small business participation. See Submittal Requirements for details.</p>	<p>Columns E & F must be completed and submitted along with supporting documentation within three business days following bid submittal deadline. Documentation of Communication of Selection Outcome to all businesses can include copies of emails, letters, faxes, or phone contact logs depicting the firm and the person contacted.</p>	<p>Trade Area(s): _____ Estimated percentage of total contract value: _____ %</p>	<p><input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade/Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail <input type="checkbox"/> Phone <input type="checkbox"/> Other</p>	<p><input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Please provide an explanation, if this firm was not selected</p>	<p>When was this firm notified of the selection outcome as a potential participant? _____ How was the selection outcome communicated to this firm? _____</p>
<p>Name: _____ Address: _____ City: _____ State: _____ Zip: _____ Phone Number: _____ E-Mail or Fax: _____</p>	<p><input type="checkbox"/> DBE - AZUCP <input type="checkbox"/> SBE - City of Phoenix Certified <input type="checkbox"/> SBC - Small Business Concern <input type="checkbox"/> Unknown</p>	<p>Trade Area(s): _____ Estimated percentage of total contract value: _____ %</p>	<p><input type="checkbox"/> Newspapers or Websites <input type="checkbox"/> Trade/Professional Listing <input type="checkbox"/> Business Outreach Events <input type="checkbox"/> E-mail <input type="checkbox"/> Phone <input type="checkbox"/> Other</p>	<p><input type="checkbox"/> Firm was selected <input type="checkbox"/> Firm was not selected Please provide an explanation, if this firm was not selected</p>	<p>When was this firm notified of the selection outcome as a potential participant? _____ How was the selection outcome communicated to this firm? _____</p>

The information provided in the Supporting Documentation must support the information presented in this Attachment A or the submittal will be deemed non-responsive.

If additional space is required, please copy and submit multiple pages of this form.

ATTACHMENT B
SMALL BUSINESS UTILIZATION COMMITMENT
(NON-NEGOTIATED CONTRACTS)

On behalf of the Competitive Range Submitter, I certify under the penalty of perjury that the information submitted herein is true and correct:

- 1) The firms indicated as "selected" in **Attachment A, *Documentation of Outreach Efforts***, will participate in this contract;
- 2) The Submitter will comply with the Outreach Requirements for Race- and Gender-Neutral Contracts for substitutions;
- 3) I understand and agree that any and all changes or substitutions must be authorized by the Equal Opportunity Department prior to implementation; and
- 4) The following statement is true and correct:

The proposed total participation of DBE, SBC, and SBE firms on this contract will be:

_____ %

Signed By: _____ (signature)

Print Name: _____

Title: _____

Name of Company: _____

Date: _____

ATTACHMENT C
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
 PROCUREMENT REPORT FOR ALL SUBCONTRACTORS/SUBCONSULTANTS
 (To be submitted with each Pay Request)

(1) PAY REQUEST NO. _____ SHEET ___ OF _____
 (2) REPORT PERIOD FROM _____ TO _____
 (3) PROJECT NAME _____ (4) PROJECT NO. _____ (5) CONTRACT AMOUNT \$ _____
 (6) CONTRACT NO. _____

CONTRACT RELATED **FOR CURRENT BILLING CYCLE** **PRIOR TO THIS BILLING CYCLE**

(7) FIRM NAME REP NAME & PHONE NUMBER	(8) SCOPE OF WORK	(9) ORIGINAL CONTRACT AMOUNT	(10) CONTRACT ADJUSTMENT	(11) REVISED CONTRACT AMOUNT	(12) AMOUNT INVOICED BY FIRM	(13) AMOUNT RETAINED THIS PERIOD	(14) AMOUNT TO BE PAID TO FIRM	(15) TOTAL AMOUNT INVOICED BY FIRM	(16) TOTAL AMOUNT RETAINED	(17) TOTAL AMOUNT PAID TO FIRM	(18) PERCENT OF CONTRACT COMPLETED
TOTALS											

(19) CONTRACTOR'S NAME _____ FOR CITY OF PHOENIX USE
 (20) AUTHORIZED SIGNATURE _____ Percent of project completed _____ % Date: _____
 (21) DATE _____ City Project Manager _____ (Print Name) _____ (Signature) _____

ATTACHMENT D

CERTIFICATION OF PAYMENT TO DBE FIRMS

(TO BE COMPLETED BY THE SUCCESSFUL BIDDER AND DBE FIRM UPON COMPLETION OF WORK)

Successful Bidder AFFIDAVIT:

The undersigned, having contracted as the Successful Bidder on Project # _____, hereby certifies that full payment (*including all retention*) has been made to the DBE firm cited below. The total value of all payments made to the DBE firm for materials and/or work performed on this project contract is as follows:

DBE Firm: _____ **Total Amount Paid: \$** _____

This certification is made under Federal and State laws concerning false statement. Supporting documentation for this payment is subject to audit and should be retained for a minimum of three (3) years from the project acceptance date. In the event the DBE was not paid in accordance with affidavits submitted by the Successful Bidder, all documentation supporting the Successful Bidder's position with regards to delayed or withheld payment(s) should be submitted.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____
Authorized Agent for Successful Bidder (Print Name and Title)

Date: _____

DBE FIRM AFFIDAVIT:

The undersigned DBE firm hereby certifies that a contract was entered into with the above named Successful Bidder to perform work or provide materials on the project cited in this document. I further certify that the total amount of payments received as provided herein by the prime contract is accurate and unchallenged.

I DECLARE UNDER PENALTY OF PERJURY IN THE SECOND DEGREE, AND ANY OTHER APPLICABLE STATE OF FEDERAL LAWS, THE STATEMENTS MADE ON THIS DOCUMENT ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

By: _____
Authorized Agent for DBE Firm (Print Name and Title)

Date: _____