



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

February 27, 2012

## NOTICE TO PROPOSERS

### DISADVANTAGED BUSINESS ENTERPRISE INFORMATION

The District has established an Underutilized DBE goal for this Agreement of **5.5%**.

#### 1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “Underutilized Disadvantaged Business Enterprise” or “UDBE” is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups:
  - Black American
  - Asian-Pacific American
  - Native American
  - Women
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

#### 2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The bidder/proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs.

#### 3. SUBMISSION OF UDBE AND DBE INFORMATION

If there is a UDBE goal on the contract, a “Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract)” (Exhibit 10-O1) form shall be included in the Request for Proposal. In order for a proposer to be considered responsible and responsive, the proposer must make good faith efforts to meet the goal established for the contract. **If the goal is not met, the proposer must**

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**document adequate good faith efforts.** Only UDBE participation will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

A “Local Agency Proposer -DBE –Information (Consultant Contract)” (Exhibit 10-O2) form shall be completed and submitted with the executed contract. The purpose of the form is to collect all UDBE and DBE commitment data required under 49 CFR 26. For contracts with no goals, this form collects information on all DBEs, including UDBEs. Even if no DBE participation will be reported, the successful bidder must execute and return the form.

#### 4. DBE PARTICIPATION GENERAL INFORMATION

It is the proposer’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A UDBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
  1. The proposer is a UDBE and will meet the goal by performing work with its own forces.
  2. The proposer will meet the goal through work performed by UDBE subconsultants, subconsultants, suppliers or trucking companies.
  3. The proposer made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The (prime consultant) shall list only one subconsultant for each portion of work as defined in their proposal and all DBE subconsultants should be listed in the cost proposal list of subconsultants.
- G. A prime consultant who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subconsultants.

#### 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
  - Click on the link in the left menu titled Find a Certified Firm
  - Click on Query Form link, located in the first sentence

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- Click on [Certified DBE's \(UCP\)](#) located on the first line in the center of the page
- Click on [Click To Access DBE Query Form](#)
- Searches can be performed by one or more criteria
- Follow instructions on the screen
- “Start Search,” “Requery,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A UDBE, PURCHASES WILL COUNT TOWARDS THE UDBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, 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. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not UDBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

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