November 19, 2020

SUBJECT: Request for Proposals (RFP) 0-2582 “Construction Management Support Services for the State Route 55 Improvement Project Between Interstate 405 And Interstate 5.”

Gentlemen/Ladies:

This letter and its Attachments comprise Addendum No. 4 to the above captioned Request for Proposals issued by the Orange County Transportation Authority (herein after “Authority”).

1. Offerors are advised that the Authority has received questions by the date and time specified in the RFP and responses are presented as Attachment A to this Addendum No. 4.

2. Offerors are advised that the Authority has made changes to the Disadvantaged Business Enterprise (DBE) requirements including the new DBE Letter of Acknowledgement and Commitment Form and other DBE requirement changes.
   i) The changes to the RFP document are included as Attachment B. Delete these sections and replace in their entirety.
   ii) The changes to the Proposed Agreement are included as Attachment C. Delete these sections and replace in their entirety.
   iii) The changes to the DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS are included as Attachment D. Delete this Attachment A to the Proposed Agreement and replace in its entirety.
   iv) The DBE Letter of Acknowledgement and Commitment form is included as Attachment E.

Offerors are reminded to acknowledge receipt of this Addendum No. 4 in their Letter of Transmittal, which is to accompany the proposal. Offerors are advised that all changes addressed in this Addendum No. 4 shall be incorporated into the final Agreement.
November 19, 2020
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Questions regarding this **Addendum No. 4** should be directed to the undersigned at 714-560-5743.

Sincerely,

**Bob Webb**

Bob Webb  
Principal Contract Administrator  
Contracts Administration and Materials Management

Attachments
- Attachment A: Questions Received and Authority’s Responses
- Attachment B: Changes to DBE Requirements in RFP  
- Attachment C: Changes to DBE Requirements in Proposed Agreement  
- Attachment D: Changes to DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS  
- Attachment E: DBE Letter of Acknowledgement and Commitment form
Questions Received and Authority’s Responses

Q.1 Do project descriptions submitted in a graphic table format need to adhere to the 12-point font, double-spaced formatting requirement?
A.1 No, but project descriptions should be readable without magnification.

Q.2 Are fonts within graphics required to adhere to the 12-point font, double-spaced requirement?
A.2 No

Q.3 Can a Table of Contents be included, but excluded from the page count?
A.3 No

Q.4 Do 11x17 pages count as one or two pages?
A.4 One

Q.5 Are firms currently on the Caltrans District 12 On-Call for construction inspection services precluded from pursuing this work?
A.5 No

Q.6 The DBE Letter of Acknowledgement and Commitment form was not included in the RFP. Will OCTA provide a copy of this or a link to where it can be located?
A.6 Please see the form included with this Addendum No. 4. The DBE Submission Requirements, the DBE Forms required information, the DBE Program Requirements instructions and Proposed Agreement have also been changed to reflect the revised requirements. Please see Attachments B, C, and D included as part of this Addendum No. 4.
Offerors are advised of the following changes to the RFP documents:

REQUEST FOR PROPOSALS DOCUMENT:

SECTION I. INSTRUCTIONS TO OFFERORS

O. DISADVANTAGED BUSINESS ENTERPRISE

The Authority has established an eighteen percent (18%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

In conformance with Title 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” offerors must complete the following forms:

- Consultant Proposal DBE Commitment Form (10-O1)
  - Letter of Acknowledgement and Commitment required from each proposed DBE firm listed on the “Consultant Proposal DBE Commitment Form (10-O1).
- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “Consultant Proposal DBE Commitment Form (10-O1).
- Bidders List

SECTION II. PROPOSAL CONTENT

B. FORMS


Offerors must complete the following forms:

- Consultant Proposal DBE Commitment Form (10-O1) Exhibit E-1
  - Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the Consultant Proposal DBE Commitment Form (10-O1). Exhibit E-2
- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “Consultant Proposal DBE Commitment Form (10-O1). Exhibit E-3
RFP EXHIBIT E:  DISADVANTAGED BUSINESS ENTERPRISE PROGRAM REQUIREMENTS AND FORMS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

4.0 DBE Proposal Submission Requirements

Proposer must complete and submit the following DBE Exhibit (form) with their proposal:

- DBE Participation Commitment Form
  - Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the DBE Participation Commitment Form)

Proposer must complete and submit the following DBE Exhibits (forms) to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date:

DBE Information - Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the DBE Participation Commitment Form)

Bidders List

<table>
<thead>
<tr>
<th>Required Forms</th>
<th>Submission</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultant Proposal DBE Commitment Form (10-O1)</td>
<td>Required at time of proposal</td>
</tr>
<tr>
<td>Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the DBE Participation Commitment Form (10-O1))</td>
<td>Required at time of proposal</td>
</tr>
<tr>
<td>DBE Information – Good Faith Efforts</td>
<td>Required no later than 4:00 p.m. on the 2nd business day after the proposal due date</td>
</tr>
</tbody>
</table>
4.1  “Consultant Proposal DBE Commitment Form - Caltrans Form 10-O1” (Exhibit E-1) required at time of Proposal. The Proposer is to provide the following information for each DBE that will participate in the contract:

4.1.1 The complete name and address of each DBE who will participate in the contract;

4.1.2 Valid DBE Certification ID to confirm eligibility status through the CUCP, in conformance with 49 CFR Part 26;

4.1.3 A description of the work that each DBE will perform or provide;

4.1.4 The dollar amount of the work to be performed or provided by the DBE;

4.1.5 The dollar amount of the work eligible to be credited for each DBE towards the DBE goal (should not include lower-tier participation and should account for the type of work to be performed);

4.1.6 The proposer shall also submit, for each DBE to perform under this Agreement, a Letter of Acknowledgement and Commitment (Exhibit E-2) signed and dated from each DBE listed, acknowledging that the DBE is participating in the contract for the specified dollar value(s) and scope of work listed on the DBE Participation Commitment Form. The Letter of Acknowledgement and Commitment and the amount(s) and scope reflected on the DBE Participation Commitment Form must match identically.

4.2  “DBE Information - Good Faith Efforts” (Exhibit E-3)

To be a responsible and responsive proposer, the proposer must make good faith efforts to meet the goal. The proposer can meet this requirement in two ways. (i) the proposer can meet the goal by documenting commitments for participation by DBE firms sufficient for this purpose; or (ii) the proposer can demonstrate that he/she took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
If the proposer did not meet or obtain enough DBE participation to meet the DBE goal, the proposer must complete and submit the “DBE Information – Good Faith Efforts,” form demonstrating that the proposer made adequate good faith efforts to meet the goal.

If the proposer has met the DBE goal based on the participation of DBEs listed on the proposer’s “DBE Participation Commitment Form,” it is at the proposer’s discretion (i.e. this is not mandatory) to submit “DBE Information – Good Faith Efforts,” form. However, the submission of good faith efforts documentation can protect the proposer’s eligibility for award of the contract if the Authority determines that the proposer failed to meet the goal for various reasons (e.g. a DBE firm was not certified at proposal submission or the proposer made a mathematical error). Submittal of only the “DBE Information – Good Faith Efforts,” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made; therefore, the proposer is encouraged to attach additional information and supporting documents as necessary.

Good Faith Efforts documentation must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.

For further guidance, refer to instructions on Exhibit E-3 “DBE Information – Good Faith Efforts,” form and the United States Department of Transportation’s (“U.S. DOT”) DBE Program, Appendix A of Title 49 CFR Part 26 - “Guidance Concerning Good Faith Efforts,” and the DBE Section of the Authority’s Pre-Proposal Power Point.

4.3 “Bidders List” (Exhibit E-4)

The Authority is required by Regulations to create and maintain a “Bidders List,” of all firms proposing or quoting on the Authority’s U.S. DOT-assisted contracts for use in calculating the Authority’s DBE goal(s). Proposers are required to complete and submit the requested information listed on the “Bidders List” form, for all firms (DBE[s] and non-DBE[s]) who submitted a bid, proposal or quote, including firms who were contracted by the prime proposer.

The “Bidders List” must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.
Offerors are advised of the following changes to RFP Exhibit B: Proposed Agreement

ARTICLE 5. ALLOWABLE COSTS AND PAYMENT

M. As partial security against CONSULTANT’s failure to satisfactorily fulfill all its obligations under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice submitted for payment by CONSULTANT, and shall make prompt and regular incremental acceptances of portions/milestones, as determined by AUTHORITY, of the Agreement work, and pay retainage to CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all monies withheld in retention from a subconsultant within thirty fifteen (3015) calendar days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions/milestones of the Agreement work by the AUTHORITY. CONSULTANT shall invoice AUTHORITY for the release of the retention in accordance with this Article.

P. The prime consultant, or subconsultant, shall return all monies withheld in retention from a subconsultant within fifteen thirty (3016) days after receiving payment for work satisfactorily completed and accepted. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this section. Federal law, CFR Title 49, Part 26.29, requires that any delay or postponement of payment over fifteen thirty (3015) days may take place only for good cause and with the AUTHORITY’s prior written approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT and subconsultants.

ARTICLE 6. PROMPT PAYMENT CLAUSE

A. AUTHORITY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subconsultants subcontractors in accordance with
regulatory mandates. Pursuant to Title 49 of the Code of Federal Regulations (CFR) Part 26.29:

B. “CONSULTANT agrees to pay each subconsultant under this Agreement for satisfactory performance of its Agreement no later than fifteenseven (715) days from the receipt of each payment CONSULTANT receives from AUTHORITY. CONSULTANT agrees further to return retainage payments to each subconsultant within fifteenseven (715) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by AUTHORITY. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with AUTHORITY’s prior written approval.” CONSULTANT shall incorporate this clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms.

C. Any violation of the provisions listed above shall subject the violating CONSULTANT to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subconsultant performance and/or noncompliance by a subconsultant.

D. Failure to comply with this provision, and/or other DBE Program requirements, without prior approval from AUTHORITY will constitute noncompliance, Noncompliance which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

ARTICLE 30. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED CONSULTANT CONTRACTS

E. If there is a DBE goal and/or DBE commitment on the Agreement, CONSULTANT must complete and submit within the specified timelines, DBE documentation electronically through
an the AUTHORITY’s approved electronic reporting system.
I. DBE Participation

It is the CONSULTANT’S responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and AUTHORITY’s DBE program developed pursuant to these regulations.

If there is a DBE goal and/or DBE commitment within the Agreement, CONSULTANT must complete and submit, within the specified timelines, the DBE documentation in Section IV. of this Attachment, through the AUTHORITY’s electronic reporting system. CONSULTANT’s submitted “DBE Participation Commitment Form,” executed subcontracts and/or purchase orders, as well as on-going DBE documentation will be utilized to monitor CONSULTANT’s DBE commitment. Unless otherwise directed and/or approved by AUTHORITY prior, CONSULTANT must not effectuate any changes to its DBE participation commitment.

CONSULTANT must complete and submit all required DBE documentation to effectively capture DBE utilization on AUTHORITY’s U.S. DOT-assisted contracts whether achieved race neutrally or race consciously. No changes to CONSULTANT’S DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

To ensure full compliance with the requirements of 49 CFR, Part 26 and AUTHORITY’s DBE Program, CONSULTANT must:

A. Take appropriate actions to ensure that it will satisfy good faith efforts to meet the DBE agreement goal and continue to meet the DBE commitment made at award, when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONSULTANT must apply and report its DBE goal commitment against the total Agreement value, including any change orders and/or amendments.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (“U.S. DOT”), AUTHORITY has adopted a Disadvantaged Business Enterprise (“DBE”) Policy and Program in conformance with Title 49 CFR, Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”.

The project is subject to these stipulated regulations and AUTHORITY’s DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR, Part 26, in the performance of
Enterprise (DBE) Participation

agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of AUTHORITY to:

Fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in AUTHORITY’s U.S. DOT-assisted contracts and subcontracts. AUTHORITY is firmly committed to the DBE Program objectives, which are designed to:

A. Ensure non-discrimination in the award and administration of AUTHORITY’s U.S. DOT-assisted contracts;

B. Create a level playing field by which DBE’s can fairly compete for AUTHORITY’s U.S. DOT-assisted contracts;

C. Ensure that AUTHORITY’s DBE Program and Overall Goals are narrowly tailored in accordance with applicable law;

D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBE’s in the AUTHORITY’s DBE Program;

E. Help remove barriers which impede the participation of DBE’s in AUTHORITY’s U.S. DOT-assisted contracts;

F. Promote the use of DBE’s in all types of U.S. DOT-assisted contracts and procurement activities conducted by AUTHORITY;

G. Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;

H. Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program; and

I. Establish and provide opportunities for DBEs by providing flexibility in the implementation of AUTHORITY’s DBE Program.

CONSULTANT must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant. Any terms used in this section that are defined in 49 CFR, Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and AUTHORITY’s DBE Program with respect to U.S. DOT-assisted contracts, the Regulations must prevail.
III. AUTHORITY’s DBE Policy Implementation Directives

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise (“DBE”) Program exists to ensure participation, equitable competition, and assistance to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY’s analysis of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Agencies’ disparity studies, AUTHORITY’s DBE Program is implemented utilizing both race-conscious and race-neutral means. When a contract-specific DBE goal is assigned to a project, meeting the contract-specific goal by committing to utilize DBEs, or documenting a bona fide good faith effort to do so, is a condition of award.

A. Definitions

The following definitions apply to the terms used in these provisions:

1. “Disadvantaged Business Enterprise (DBE)” means a small business concern: (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which 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.

2. “Small Business Concern” means a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

3. “Socially and Economically Disadvantaged Individuals” means any individual who is a citizens (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual’s control.

   a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;  
ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;  
iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaskan Natives, or Native Hawaiians;  
iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;  
v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;  
vi. Women; and  
vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

c) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which 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 such individuals.

5. "Manufacturer" means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CONSULTANT.

6. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Agreement are bought, kept in stock, and regularly sold to the public in the
usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

7. **“Fraud”** includes a firm that does not meet the eligibility criteria of being a certified DBE and attempts to participate in a U.S. DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty. AUTHORITY may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR, Part 31. AUTHORITY may refer cases of identified fraud to the Department of Justice, for prosecution under 18 U.S.C. 1001, or any other applicable provisions of law. Any person who makes a false or fraudulent statement in connection with participation of a DBE in any U.S. DOT-assisted program or otherwise, violates applicable Federal statutes.

8. **“Other Socially and Economically Disadvantaged Individuals”** means those individuals who are citizens of the United States (or lawfully admitted permanent residents), and who, on a case-by-case basis, are determined by Small Business Administration or AUTHORITY to meet the social and economic disadvantage criteria described below.

B. **“Social Disadvantage”**

1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

2. The individual must demonstrate that he/she has personally suffered social disadvantage.

3. The individual's social disadvantage must be rooted in treatment which he/she has experienced in American society, not in other countries.

4. The individual's social disadvantage must be chronic, longstanding and substantial; not fleeting or insignificant.

5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a
determination of economic disadvantage.

C. “Economic Disadvantage”

1. The individual's ability to compete in the free enterprise system has been impaired
due to diminished capital and credit opportunities, as compared to others in the same
line of business and competitive market area that are not socially disadvantaged.

2. The following criteria will be considered when determining the degree of diminished
credit and capital opportunities of a person claiming social and economic
disadvantage:

   With respect to the individual:
   • availability of financing
   • bonding capability
   • availability of outside equity capital
   • available markets

   With respect to the individual and the business concern:
   • personal and business assets
   • personal and business net worth
   • personal and business income and profits

IV. Submission of DBE Information and Ongoing Reporting Requirements (Post-Award)

If there is a DBE goal and/or DBE commitment on the Agreement, CONSULTANT must complete
and submit within the specified timelines, the following DBE documentation, electronically
through the AUTHORITY’s electronic reporting system:

A. “Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt
   Payment Verification Report”

A Primary purpose of this report is to ensure CONSULTANT’s DBE commitments are
attained, properly reported, and credited in accordance with DBE crediting provisions
based on the capacity the DBE performs the scope of work/service.

This report further serves to monitor prompt payment to both DBE and non-DBE firms,
and collect DBE utilization data as required under 49 CFR, Part 26.

The CONSULTANT is required to complete and submit this report through the
AUTHORITY’s electronic reporting system by the 10th of each month until completion of
Enterprise (DBE) Participation

The Agreement. CONSULTANT must submit the first report following the first month of Agreement activity. Even if no DBE participation will be reported within a period, CONSULTANT must complete and submit the report.

The Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Report must include the following information:

1. Listed and Proposed CONSULTANT/Subconsultant Information – For All DBE participation being claimed either race-neutrally or race-consciously, regardless of tier:

   a) DBE Firm Name and DBE Capacity Type.

   b) DBE Firm Contract Value Information:
      
      Original Contract Amount, running total of change order amount, Current Contract Amount, Amount Paid to CONSULTANT or Subconsultant(s) During Month and Amount Paid to CONSULTANT or Subconsultant(s) to date.

2. CONSULTANT Prompt Pay Verification Summary

   The Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Report process requires the CONSULTANT to submit pertinent payment details for any firm (DBE and Non-DBE) that they have reported a payment to within the reporting period. CONSULTANT is advised not to report the participation of DBE(s) toward the CONSULTANT’s DBE attainment until the amount being claimed has been paid to the DBE.

   Pertinent payment details include:

   a) Invoice Number
   b) Invoice Amount
   c) Payment Amount
Enterprise (DBE) Participation

d) Invoice Date

e) Check Number

f) Date of Payment

g) Corresponding Prime Invoice (associated to subconsultants’ invoice)

h) Retention

i) Disputed or Withheld invoice amounts

Firms will receive a notification from the AUTHORITY’s electronic reporting system when a payment is reported to them and they will be required to log-in to the system to verify the payment information provided by CONSULTANT. A reported payment to a lower-tier DBE firm will not be credited until the DBE firm has validated the payment through the AUTHORITY’s electronic system. All payments to lower-tier firms must be validated prior to the 10th of each month following the reporting period.

Electronic submission of the Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Report includes a certification under penalty of perjury of the prompt payment assurance statement of compliance, providing assurance that timely payments have been issued to all subconsultants in accordance with regulatory mandates and as required by 49 CFR Part 26.29.

B. DBE Subcontract Agreements

CONSULTANT must electronically submit to AUTHORITY copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. CONSULTANT must immediately notify AUTHORITY in writing, of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

C. Final Report-Utilization of Disadvantaged Business Enterprises (DBE)

Upon completion of the project, CONSULTANT must electronically designate their last Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Report to facilitate reporting and capturing DBE attainments and prompt release of retention to all subconsultants at conclusion of the project. Additionally, the CONSULTANT must submit an Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors(F-PDF). The form must be furnished to AUTHORITY within thirty (30) days from the date of the project. The amount of ten-thousand dollars ($10,000) will be withheld from payment until a satisfactory form is submitted.
D. Disadvantaged Business Enterprises (DBE) Certification Status Change

If a DBE Subconsultant is decertified during the life of the project, the decertified Subconsultant must notify the CONSULTANT in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the project, the Subconsultant must notify CONSULTANT in writing with the date of certification (Attach DBE certification/decertification letter). CONSULTANT must electronically furnish the written documentation to AUTHORITY within ten (10) days of receipt. Upon completion of the project, Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change must be signed and certified correct by the CONSULTANT indicating the DBEs' existing certification status. If there are no changes, indicate “No Changes.” The signed and certified form must be furnished to AUTHORITY within thirty (30) days from the date of project acceptance.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars ($10) per day, per submittal document.

AUTHORITY requires CONSULTANT to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by AUTHORITY, unless otherwise provided by applicable record retention requirements for CONSULTANT’S agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of AUTHORITY. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

AUTHORITY reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by implementing the following method(s):

a) Posting CONSULTANT payment data to a website, database, or other place accessible to Subconsultants to assist them in determining when they should expect to receive payment.

b) Requiring CONSULTANT to use an automated reporting system, inclusive of, but not limited to, real time entry of payments made and received by CONSULTANT and their lower-tiers.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of bid/proposal submission:

1. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be certified through the California Unified Certification Program (“CUCP”) at the time of
2. A DBE may participate as a prime CONSULTANT, Subconsultant, joint venture partner, vendor of material or supplies, or as a trucking company.

3. 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 work 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.

4. The use of joint-checks for DBE firms must be approved by AUTHORITY prior to execution, and a joint-check agreement must accompany the request to AUTHORITY.

5. A DBE must perform a commercially useful function in accordance with 49 CFR Part 26.55 (i.e. 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). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

A. When a DBE is proposed to participate in the Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If CONSULTANT is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.

1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONSULTANT’S DBE attainment.

2. CONSULTANT is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
Enterprise (DBE) Participation

a) Sixty percent (60%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a regular dealer; or

b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.

3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward CONSULTANT’S DBE attainment, provided that the fee or commission is reasonable and not excessive, as compared with fees or commissions customarily allowed for similar work including:

   a) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Agreement;
   b) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves), when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
   c) Fees and commissions charged for providing any insurance specifically required in the performance of the Agreement.

4. If the CONSULTANT listed a non-certified, 1st tier Subconsultant to perform work on this Agreement, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm’s own forces can be counted toward DBE participation on the Agreement. If a DBE CONSULTANT performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.

5. CONSULTANT is advised not to report the participation of DBE(s) toward the CONSULTANT’S DBE attainment until the amount being claimed has been paid to the DBE.

VII. DBE Substitution, Termination and On-Going Good Faith Efforts

AUTHORITY requires that CONSULTANT not terminate a DBE without AUTHORITY’s prior written consent. This includes, but is not limited to, instances in which CONSULTANT seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.
Authority will provide such written consent only if it agrees, for reasons stated in the concurrence document, that Consultant has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

A. The listed DBE subconsultant fails or refuses to execute a written contract.

B. The listed DBE subconsultant fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE Subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of Consultant.

C. The listed DBE subconsultant fails or refuses to meet Consultant’s reasonable, nondiscriminatory bond requirements.

D. The listed DBE subconsultant becomes bankrupt, insolvent, or exhibits credit unworthiness.

E. The listed DBE subconsultant is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 108, 215 and 1,200 or applicable state law.

F. Consultant has determined that the listed DBE subconsultant is not a responsible Consultant.

G. The listed DBE subconsultant voluntarily withdraws from the project and provides to you written notice of its withdrawal.

H. The listed DBE is ineligible to receive DBE credit for the type of work required.

I. A DBE owner dies or becomes disabled with the result that the listed DBE Consultant is unable to complete its work on the contract.

J. Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if Consultant seeks to terminate a DBE it relied upon to obtain the Agreement so that Consultant can self-perform the work for which the DBE Consultant was engaged or so that Consultant can substitute another DBE or non-DBE Consultant after Agreement award.

To submit a request to terminate and/or substitute a DBE subconsultant, Consultant will be required to submit a DBE Commitment Change Request through Authority’s electronic system. The DBE Commitment Change Request includes options to increase, decrease, substitute or terminate a DBE commitment.
Enterprise (DBE) Participation

If decrease, substitute or terminate is selected, CONSULTANT must give notice in writing to the DBE, with a copy to AUTHORITY, of its intent to decrease, substitute and/or terminate, and the reason for the request. This documentation will be required by the AUTHORITY’s electronic system when submitting the DBE Commitment Change Request.

CONSULTANT must give the DBE five (5) days to respond to CONSULTANT’S notice and advise AUTHORITY and CONSULTANT of the reasons, if any, why it objects to the proposed termination of its subcontract or purchase order and why AUTHORITY should not approve CONSULTANT’S action. If required in a particular case as a matter of public necessity (e.g. safety), CONSULTANT may provide a response period shorter than five (5) days.

In the event of an approved DBE substitution, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by CONSULTANT within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days if necessary, at the request of the CONSULTANT. The substitute DBE must be certified as a DBE at the time of request for substitution.

CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY. This includes partial terminations.

Should CONSULTANT elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, AUTHORITY will review the documentation and provide a determination through AUTHORITY’S electronic system to CONSULTANT stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed and required subcontracts, supplies, trucking commitments, or other services have been approved by AUTHORITY.

VIII. Additional DBE Subconsultants

In the event CONSULTANT identifies additional DBE Subconsultants or suppliers not previously identified by CONSULTANT for DBE participation under the Agreement, CONSULTANT must notify AUTHORITY by submitting a “Request to Add,” through the AUTHORITY’S electronic system. This will enable AUTHORITY to verify the firm’s eligibility, capacity, CUF and ensure there is not a scope conflict with another previously listed firm. Proposed firms will not be applied towards CONSULTANT’S DBE participation until approved by AUTHORITY.

CONSULTANT must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of
IX. **DBE “Frauds” and “Fronts”**

Only legitimate DBEs are eligible to participate as DBEs in the AUTHORITY’s U.S. DOT-assisted contracts. CONSULTANT is cautioned against knowingly and willfully using “fronts.” The use of “fronts” and “pass through” subcontractors to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

X. **Dispute Resolution**

All contracts in excess of five-hundred thousand dollars ($500,000) shall contain provisions or conditions which will allow for dispute resolution remedies in instances where CONSULTANTS violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

CONSULTANT shall incorporate this Section into each subcontract related to work arising under this Agreement and shall not incorporate by reference.

CONSULTANT and subconsultant agree to notify AUTHORITY within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

CONSULTANT and subconsultant further agree to proceed through informal meetings, mediation, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

I. **INFORMAL MEETINGS:**

AUTHORITY is available to assist CONSULTANT with coordination of informal meeting requests to assist in the resolution of disputes between CONSULTANT and subconsultant. AUTHORITY’s DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from CONSULTANT and subconsultant for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.
II. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. AUTHORITY’s DELEO and her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

Performance During Dispute: Unless otherwise directed by AUTHORITY, CONSULTANT and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

Flow Down Requirements: The dispute resolution provisions flow down to all tiers.

These provisions shall not apply to disputes between CONSULTANT and AUTHORITY. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

XI. Administrative Remedies and Enforcement

CONSULTANT must fully comply with the DBE contract requirements, including the Authority’s DBE Program and Title 49 CFR, Part 26 “Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs,” and ensure that all subconsultants, regardless of tier, are also fully compliant. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as AUTHORITY 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 CONSULTANT from future bidding/proposing as non-responsible.

In instances of identified non-compliance, a Cure Notice will be issued to CONSULTANT identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

CONSULTANT must be given ten (10) working days from the date of the Cure Notice to remedy or to: (1) File a written appeal accompanied with supporting documentation; and/or (2) Request a hearing with AUTHORITY to reconsider AUTHORITY’s DBE determination.
Failure to respond within the ten (10) working day period will constitute a waiver of CONSULTANT’S right to appeal. If CONSULTANT files an appeal, AUTHORITY, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If after review of CONSULTANT’S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONSULTANT, the written determination must state the specific remedy(ies) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance, AUTHORITY will release all withholdings.

In addition to administrative remedies defined in this section, AUTHORITY is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.
DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT

1. RFP NO.:___________________________________________________________

2. Project Name/Description:__________________________________________

3. Offeror:__________________________________________________________

4. DBE Commitment Information

   (A) Description of work to be performed by DBE firm (include bid item number on the DBE
       Participation Commitment Form as applicable):

       ______________________________________________________________________

       ______________________________________________________________________

   (B) Percentage of work to be performed ___________ (For Architectural & Engineering Services
       Proposals)

       OR

       Dollar value of work to be performed $___________ (For Professional Services Proposals)

5. DBE ACKNOWLEDGMENT*

I acknowledge that my firm has been listed by the Offeror named above, and is committed, to perform the
scope and portion of work (A and B) stated above.

DBE Firm’s Name:________________________________________________________

Name:___________________________________________________________________

Signature:________________________________________________________________

Title:___________________________________________________________________

Telephone:________________________________________________________________

*If the offeror does not receive award of the prime contract, any and all representations in this letter of Acknowledgment and
Commitment shall be null and void.

This form may be used to fulfill the DBE Participation Commitment Letter requirement as stated in the RFP instructing that the
"the offeror is required to submit with the proposal a DBE Letter of Acknowledgement and Commitment signed and dated from
each DBE acknowledging that the DBE is participating in the contract for the specified value and scope of work."
INSTRUCTIONS - DBE LETTER OF ACKNOWLEDGEMENT AND COMMITMENT

Offeror is required to ensure all information is complete and accurate:

1. **RFP No.** - Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Offeror Name** - Enter the offeror’s firm name.
4A. **Description of work** - Scope of work to be performed that will be credited towards DBE participation. To include bid item number on the DBE Participation Commitment Form as applicable.
4B. **Value** - Enter the percentage or total dollar value of participation for the DBE firm.
5. **DBE Acknowledgement** – DBE to provide firm name, authorized person’s name, signature, title and telephone number if they have been notified that they were listed for the scope and value reflected in #4.

**NOTE:** If the offeror does not receive award of the prime contract, any and all representations in the letter of Acknowledgment and Commitment shall be null and void.