

## **EXHIBIT 14**

### **DEVELOPER'S DBE PERFORMANCE PLAN**

#### **DBE PLAN**

The following, together with appendices, is submitted as an individual Disadvantaged Business Enterprise (DBE) Plan to address the applicable requirements in TxDOT's Disadvantaged Business Enterprise (DBE) Program adopted pursuant to 49 CFR Part 26, 43 Texas Administrative Code §9.201 – §9.242 and the Facility Agreement for North Tarrant Express Segments 3A & 3B ("Agreement"):

#### **1. GOALS**

##### **A. Percentage Goals**

The goal for DBE participation in the Work required under this Agreement for professional services and construction of the Facility shall be 6% of the total cost of design and other professional services and of the construction of the Facility. Such realistic percentage goal is established to reflect the Developer's good faith effort to employ Disadvantaged Business Enterprises whenever possible in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

#### **2. PRINCIPAL TYPES OF SUPPLIES AND SERVICES TO BE SUBCONTRACTED**

The principal products and/or services the Developer anticipates subcontracting and identification of DBEs for performance of design work, other professional services and construction will be determined as work progresses and submitted to TxDOT on the DBE commitment agreement form SMS 4901.

#### **3. METHOD FOR DEVELOPING GOALS**

The work activities to be self-performed by the Developer's workforce will be identified by human resource managers and project management personnel based on best value assessment of each work activity and labor resource. The Developer's labor and materials sourcing strategy embodies preferences in offering subcontractor-designated work to qualified DBE's, as feasible.

The goals listed herein reflect internal policy objectives and procedures that require a careful review and evaluation process of the services and/or products to be subcontracted. The subcontracting data accumulated by the Developer through our sourcing/evaluation process for this project will be based on an aggressive outreach program targeted at maximizing the utilization of qualified DBE's whenever practicable by using a broad base of resources to identify and source potential DBE's.

#### 4. SOURCES FOR SOLICITATION

The following sources have been identified by the Developer as available resources to locate and solicit appropriate disadvantaged business enterprises and will be utilized as needed:

- i. Owner provided subcontractor listings
- ii. Texas Unified Certification Program (TUCP) directory
- iii. Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA);
- iv. The Developer's Internal Vendor Database – created from letters of introduction, pre-qualification documents, and personal interviews with small, small disadvantaged, women-owned, HUB Zone, and service disabled veteran enterprise representatives;
- v. ***The Blue Book of Building and Construction***, regional directories of building and construction vendors;
- vi. ***MBE Contractor Directory*** – compiled and maintained by the Associated General Contractors of America;
- vii. Office of Small and Disadvantaged Business Utilization Specialist;
- viii. National Directories
  - *National Directory of Women-Owned Businesses*
  - *National Directory of Minority-Owned Business Firms*
  - *Smoke Signals*
  - *The Business Women's Network Directory*
  - *National Center of American Indian-Owned Businesses*
- ix. Databases
  - *Minority Business Development Agency (MBDA)*
  - *GSA's Office of Enterprise Development Vendor Profile Database*
  - *Databases Established by Various Government Agencies*
- x. Publications
  - *Small Business Resource Guide*
  - *Federal Acquisition Report*
  - *Washington Business Journal's Book of Lists*
  - *Minorities in Business Daily*
  - *Local Newspaper and Trade Publications*
- xi. Trade and Professional Associations

- *National Foundation for Women Business Owners (NFWBO)*
- *National Minority Supplier Development Council, Inc.*
- *National Association of Minority Contractors*
- *National Center for American Indian Enterprise Development*
- *National Business League*
- *Latin American Management Association*
- *The National Black Business Council, Inc.*
- *Hispanic Business Professional Women Association*

All subcontractors considered for Invitations to Bid by the Developer, including DBEs, are asked to complete a Prequalification Form. This form is reviewed internally by the Developer to evaluate the following areas of concern such as:

- ◆ Quality of services and/or products;
- ◆ Pricing structure;
- ◆ Delivery schedule;
- ◆ Financial stability;
- ◆ Safety record;
- ◆ Insurance/Bonding information;
- ◆ Experience;
- ◆ Personnel;
- ◆ Equipment.

Additional information, if required, may be obtained from Dun and Bradstreet reports, personal interviews and contact with business references.

## **5. INVITATION TO BID**

Following the identification and prequalification of a potential subcontractor/supplier, an **Invitation to Bid** is formulated and electronically issued to the subcontractor. A log is maintained by the Procurement Department to track the subcontractors contacted and their response. Sample subcontract and/or purchase orders agreements are included with the Invitation as a resource document for the subcontractor's information and pricing consideration. All plans and specifications are made available for review. Applicable addenda to the contract are also transmitted to the subcontractor as necessary.

## **6. SELECTION PROCESS AND AWARD**

The responsive subcontractor quotes are evaluated based on price, qualifications of bid, inclusions/exclusions, Prequalification information, etc. After careful consideration with input from Subcontracting, Estimating, and Management, the Project Team makes a selection of the successful subcontractors for each work scope subcontracted. If a DBE is not selected the reasons for this decision is documented on the vendor log for the particular work order. Appropriate agreements are drafted and forwarded to the subcontractor for execution.

## 7. PLAN ADMINISTRATION

The following individual will administer the subcontracting program:

**NAME:** *Angela Berry-Roberson*  
*DBE Manager*

**ADDRESS:** *NTE Mobility Partners Segments 3 LLC*  
*9001 Airport Freeway, Suite 600*  
*North Richland Hills, Tx 76180*

**PHONE:** *972-922-0826*

**E-MAIL:** *aroberson@ferrovial.us*

The specific duties, as they relate to this subcontracting plan, include general overall responsibility for the subcontracting program, and the development, preparation and execution of individual subcontracting plans, and the monitoring of performance relative to the contractual subcontracting requirements contained in this plan including, but not limited to:

- The duties described in Paragraph 4 above.
- Preparing and submitting periodic governmental required subcontracting reports including a monthly DBE Plan assessment report.
- Coordinating activities during compliance reviews by Federal agencies.
- Coordinating activities involving small, small disadvantaged, and women-owned enterprises, as related to the subcontracting program.
- Monitoring attainment of proposed goals.

## 8. OUTREACH EFFORTS

- A. Efforts will be taken to assure that small, small disadvantaged and women-owned business concerns will have an equitable opportunity to compete, along with large businesses, for subcontract work. Outreach efforts will be made through:
- i. Contacts with minority and small business trade associations.
  - ii. Contacts with business development organizations.
  - iii. Contacts with the TxDOT Office of Civil Rights.
  - iv. Attendance at SBA or DBE procurement conferences and trade fairs.
  - v. Mentor-Protégé relationships.

- B. Internal efforts will be made to guide and encourage purchasing agents, buyers, etc., to utilize small, small disadvantaged, and women-owned enterprises, as follows:
  - i. By notifying appropriate internal purchasing agents and buyers of small, small disadvantaged, and women-owned business sources.
  - ii. By monitoring efforts to achieve the goals of the subcontracting plan.

## **9. PLANS FOR SUBCONTRACTORS FOR THE DEVELOPER**

- A. The Developer shall include in all subcontracts subject to this plan the following language in accordance with all applicable FAR regulations:

*The contractor 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 and subcontracts. 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 DEVELOPER deems appropriate.*

*The Contractor shall pay the subcontractor or subprovider under this prime contract for satisfactory work performed within ten (10) days after the Contractor receives payment for the work performed by the subcontractor. Also, any retained monies on a subcontractor's work shall be paid to the subcontractor within ten (10) days after satisfactory completion of all the subcontractor's work. Completion of all the subcontractor's work shall include testing, maintenance and other similar periods that are the responsibility of the subcontractor.*

*SUBCONTRACTOR hereby specifically agrees to be bound and to comply with the subcontracting requirements of the terms and conditions of the Agreement including but not limited to, the requirement that SUBCONTRACTOR, except small business concerns, adopt and comply with a plan similar to this plan and submit such plan for review and acceptance by the DEVELOPER.*

## **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

- A. The Developer agrees to submit monthly reports and to cooperate in any studies or surveys, as may be required by TxDOT, in order to determine the extent of the compliance by the Owner to achieve the goal of the DBE plan. These reports will be due within 15 days after the end of a calendar month and will be submitted until all DBE subcontracting or material supply activity is completed.
- B. The Developer agrees to submit all applicable Standard Forms located on the TxDOT website at [www.txdot.state.tx.us/forms](http://www.txdot.state.tx.us/forms)

- C. To ensure that DBE requirements are complied with, TxDOT will monitor the Developer's efforts by reviewing monthly reports submitted to TxDOT by the Developer indicating progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by TxDOT.

## **11. RECORDS**

- A. The Developer agrees to maintain the following types of records to document compliance with the DBE plan:
  - i. Small, small disadvantaged and women-owned business concern source lists, guides, and the other data identifying these suppliers, subcontractor, etc.
  - ii. Organizations contacted for providing small and small disadvantaged, women-owned business sources.
  - iii. Records on each subcontract solicitation resulting in an award showing whether or not small and small disadvantaged business concerns were contacted, and if not, why not; whether or not small and small disadvantaged, women-owned business concerns were contacted, and if not, why not; and, if applicable the reason the award was not made to a small or small disadvantaged business concern.
  - iv. Records of any outreach efforts to contact trade associations, business development, business development organizations, and conferences and trade fairs, to locate DBEs.
  - v. Records of internal guidance and encouragement provided to buyers through workshops, seminars, training, etc., and performance monitoring to evaluate compliance with program requirements.
  - vi. Records on a contract-by-contract basis to support award data submitted by the offeror to the government, including name, address, and business size of each subcontractor.

## **12. TRAINING**

The Developer will ensure that all applicable training requirements will be accomplished with each subcontractor through orientation and/or acknowledgement of safety requirements included in all subcontract agreements.

## **13. EEO**

All Federal employment requirements to include EEO, affirmative action, labor, and all other applicable requirements will be posted at project site and reference to these requirements attached to all subcontract agreements.

## 14. IMPLEMENTATION

In order to effectively implement this plan to the extent consistent with efficient contract performance, The Developer shall perform the following functions:

- A. Assist disadvantaged business concerns by arranging solicitations time for the preparation of bids, quantities, specifications and delivery schedules, so as to facilitate the participation of such concerns. Where the lists of potential DBE subcontractors are excessively long, reasonable effort shall be made to give all such business concerns an opportunity to compete over a period of time.
- B. Provide adequate and timely consideration of the potentialities of DBE subcontractors in all "make-or-buy" decisions.
- C. Counsel and discuss subcontracting opportunities with representatives of DBE's.
- D. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as DBE's for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in The Developer's subcontracting plan.

**DBE SPECIAL PROVISIONS  
FOR NON-TRADITIONAL CONTRACTS  
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**Disadvantaged Business Enterprise in Federal-Aid Construction  
for Non-Traditional Contracts**

**Description.** The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal for this Agreement is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction of this Special Provision shall apply to this Agreement. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this Agreement.

**Article A. Disadvantaged Business Enterprise in Federal-Aid Construction for Non-Traditional Contracts.**

**1. Policy.** In the performance of this Agreement the Developer shall comply with 49 CFR Part 26, the Department's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended. For a conflict between the language of this Special Provision and 49 CFR Part 26, the Department's DBE Program, or 43 Texas Administration Code, Chapter 9, Sections 9.200 – 9.242, as amended, 49 CFR Part 26, the Department's DBE Program, or 43 TAC, Chapter 9, Sections 9.200 – 9.242 as applicable, shall control.

**a.** Developer, its Contractor and subcontractors must meet the DBE goal set out in the Agreement by obtaining commitments from eligible DBEs or the Developer must show acceptable evidence of Good Faith Efforts to meet the DBE goal.

**b.** The Developer shall solicit DBEs through reasonable and available means.

**c.** The Developer, Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Developer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Developer to carry out these requirements is a material breach of this Agreement, that may result in the termination of this Agreement or such other remedy as the recipient deems appropriate.



d. The Developer will include this Special Provision in all Contracts entered into by the Developer. The Developer will also require any Contractor to include this Special Provision in any Contract that the Contractor enters into under this Agreement.

e. By signing this Agreement the Developer certifies that the DBE goal as stated in the Agreement will be met by obtaining commitments from eligible DBEs or that the Developer will provide acceptable evidence of good faith effort to meet the commitment within the time frame set out below.

**2. Definitions.** The definition for terms used in this Provision can be found in Exhibit 1 of this Agreement 49 CFR, Part 26 or 43 TAC §9.202, Definitions. Terms not defined in Exhibit 1 of this Agreement 49 CFR, Part 26, or 43 TAC §9.202 will for the purpose of this Special Provision be defined by the term's common usage.

**3. Developer's Responsibilities.** These requirements must be satisfied by the Developer. Failure of the Developer to meet these requirements may result in the issuance of Sanctions by the Department.

a. The Developer shall, in consultation with the Department, develop and submit a DBE Performance Plan meeting the requirements set forth in Exhibit 14 to this Agreement, and shall also submit the completed Non-Traditional Contract form for the applicable type of commitment for each DBE that will be used to satisfy the DBE goal, to the extent known at the date of submission of the DBE Performance Plan. The DBE Performance Plan must be submitted to the Department not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of this Agreement. The DBE Performance Plan is subject to review, comment and approval by the Department prior to and as a condition of execution of the Agreement.

b. Should the Developer to whom the Agreement is conditionally awarded refuse, neglect or fail to submit an acceptable DBE Performance Plan, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

c. The Developer shall designate a DBE liaison officer who will administer the Developer's DBE program and who will be responsible for all aspects of the Developer's DBE program including maintaining all records and all reporting and correspondence with the Department on DBE issues.

d. A Developer who cannot meet the Agreement goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A.

e. The Developer and Contractors shall not terminate a DBE without written consent of the Department. The Developer must comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. This includes written notification to the DBE and the

Department and providing the DBE five days in which to respond to the Developer's or Contractor's reasons for the termination. The Department will not consent to the termination or substitution if the Developer or Contractor cannot demonstrate that the provisions of 49 CFR §26.53 and 43 TAC §9.229, DBE Substitutions and Terminations, have been followed. Terminating a DBE without Department approval is a violation of this Special Provision and can lead to Sanctions.

f. If the Department approves the termination of the DBE Contractor, the Developer or Contractor shall make a good faith effort to replace the terminated DBE Contractor with another DBE, to the extent needed to meet the Agreement goal. The Developer shall submit the applicable Non-Traditional Contract commitment form for the substitute DBE firm(s). The Developer may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

#### **4. Eligibility of DBEs.**

a. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR Office. An update of the Directory can be found on the Internet at <http://www.txdot.gov>.

b. Only DBE firms certified at the time the commitments are submitted are eligible to be included in the information furnished by the Developer as required under this Special Provision.

c. For purposes of the DBE goal on this project, DBEs are only allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a Contract or subcontract are eligible for DBE goal participation.

#### **5. Determination of DBE Participation.**

When a DBE participates in a Contract, only the values of the work actually performed by the DBE, as detailed in 49 CFR §26.55, 43 TAC §9.231, Computing Work Performed by a DBE, 43 TAC §9.232, Commercially Useful Function, 43 TAC §9.233, Commercially Useful Function by DBE Trucking Firm, and 43 TAC §9.234, Counting Materials or Supplies Provided by DBE Manufacturer or Regular Dealer, shall be counted by the Developer toward the DBE goal.

#### **6. Records and Reports.**

- a. The Developer shall submit monthly reports, after work begins, on payments to all Contractors both DBE and non-DBE. These reports will be due within 15 days after the end of each calendar month. These reports will be required until all DBE Contracting or material supply activity is completed.
- b. The Developer shall submit a final summary report of DBE payments upon completion of the project. The Developer will not receive final payment until this final report has been received and approved by the Department. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts must be submitted.
- c. The Department may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Department's project number.
- d. Negative reports are required when no activity has occurred in a monthly period.
- e. The Developer shall provide copies of Contracts or agreements and other documentation upon request.
- f. The Developer must provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Contractors and Suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 must be submitted each month and the month following the month when final acceptance occurred at the end of the project.
- g. A copy of all reports submitted to the department and all supporting documentation must be retained for a period of 3 years following completion of the Contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT.

## **7. Compliance of Developer.**

- a. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Developer's efforts to involve DBEs during the performance of this Agreement. This will be accomplished by a review of monthly reports submitted to the Department by the Developer indicating the Developer's progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.
- b. The Developer shall receive credit toward the DBE goal based on actual payments to the DBE Contractor. The Developer shall notify the Department if the Developer withholds or reduces payment to any DBE Contractor. The

Developer shall submit an affidavit detailing the DBE Contract payments prior to receiving final payment for this Agreement.

c. The Developer's failure to comply with the requirements of this Special Provision shall constitute a material breach of this Agreement. In such a case, the Department reserves the right to terminate this Agreement or seek sanctions under 43 TAC §9.237, Determination of Noncompliance; Sanctions.

**B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation.** It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for Contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this Contract as follows:

1. The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for Contracts and Subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported to the Department each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

2. The Contractor, sub-recipient 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.

**SPECIAL PROVISION**  
**009---009**  
**Measurement and Payment**

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

**Article 9.6. Progress Payments, Section A, Retainage** is voided and replaced by the following:

**A. Retainage.** Retainage will not be withheld on this project.

**Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors** is voided and replaced by the following:

**B. Payment Provisions for Subcontractors.** For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected, approved, and paid by the Department.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.