

Special Provision to Item 000

Small Business Enterprise in State-Funded Projects

# Description

The purpose of this Special Provision is to implement the Texas Department of Transportation’s policy of ensuring that SBEs have an opportunity to participate in the performance of Contracts. If the SBE goal is greater than zero, Section 2.1., “Article A—SBE Goal is Greater than Zero,” will apply to this Contract; otherwise, Section 2.2., “Article B—No SBE Goal,” will apply. The percentage goal for SBE participation in the work to be performed under this Contract will be in accordance with the proposal.

# Definitions

A Small Business Enterprise (SBE) is a firm certified as such by the Texas Department of Transportation. Firms certified as Historically Underutilized Businesses (HUBs) by the Texas Comptroller of Public Accounts and as Disadvantaged Business Enterprises (DBEs) by the Texas Uniform Certification Program automatically qualify as SBEs.

## Article A—SBE Goal is Greater than Zero.

### **Policy**. The Owner is committed to providing contracting opportunities for small businesses. Therefore, it is the Owner’s policy to develop and maintain a program to facilitate contracting opportunities for small businesses. Consequently, the requirements of the Owner’s SBE Program apply to this Contract as follows.

The Contractor will make a good faith effort to meet the SBE goal for this Contract.

The Contractor and any subcontractors will not discriminate on the basis of race, color, national origin, age, disability, or sex in the award and performance of this Contract. These nondiscrimination requirements must be incorporated into any subcontract and purchase order.

After a conditional award is made to the low Bidder, the Owner will determine the adequacy of a Contractor’s efforts to meet the Contract goal, in accordance with Section 2.1.2., “Contractor’s Responsibilities.” If the requirements in accordance with Section 2.1.2., “Contractor’s Responsibilities,” are met, the Contract will be forwarded to the Contractor for execution.

The Contractor’s performance in meeting the SBE goal during the construction period of the Contract will be monitored by the Owner.

### **Contractor’s Responsibilities**. These requirements must be satisfied by the Contractor. An SBE Contractor may satisfy the SBE requirements by performing at least 25% of the Contract work with their own organization in accordance with Item 8, “Prosecution and Progress.”

The Contractor must complete an SBE Commitment Agreement Form for each SBE-certified firm the Contractor intends to use to satisfy the SBE goal. The SBE Commitment Agreement Form must be submitted to the Owner so as to arrive no later than 5 P.M. on the 10th business day, excluding national holidays, after the conditional award of the Contract. When requested, additional time not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.

A Contractor that cannot meet the Contract goal, in whole or in part, must document the good faith efforts taken to meet the SBE goal. The Owner will consider as good faith efforts all documented explanations that are submitted and that describe a Contractor’s failure to meet an SBE goal or obtain SBE participation, including:

* advertising in general circulation, trade association, and minority- or women-focused media regarding subcontracting opportunities,
* dividing the Contract work into reasonable portions in conformance with standard industry practices,
* documenting reasons for rejection or meeting with the rejected SBE to discuss the rejection,
* providing qualified SBEs with adequate information pertinent to bonding, insurance, plans, Specifications, scope of work, and the requirements of the Contract,
* negotiating in good faith with qualified SBEs, not rejecting qualified SBEs that are also the lowest responsive Bidder; and
* using the services of available minorities and women; community organizations; Contractor groups; local, state, and federal business assistance offices; and other organizations that provide support services to SBEs.

The good faith effort documentation is due to the Owner at the time and place in accordance with this Section. The Owner will evaluate the Contractor’s documentation. If it is determined that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Owner.

Should the Bidder to which the Contract is conditionally awarded refuse, neglect, or fail to meet the SBE goal or demonstrate to the Owner’s satisfaction sufficient efforts to obtain SBE participation, the proposal guaranty filed with the bid will become the property of the Owner, not as a penalty, but as liquidated damages to the Owner.

The Contractor must not terminate an SBE subcontractor submitted on a commitment agreement for a Contract with an assigned goal without the prior written consent of the Owner.

The Contractor must designate an SBE contact person who will administer the Contractor’s SBE program and who will be responsible for submitting reports, maintaining records, and documenting good faith efforts to use SBEs.

The Contractor must inform the Owner of the representative’s name, title, and telephone number within 10 days of beginning work.

### **Eligibility of SBEs**. The Texas Department of Transportation certifies the eligibility of SBEs.

Firms certified as SBEs are listed on the Texas Department of Transportation’s online directory located at <https://txdot.txdotcms.com/>.

Only firms certified at the time of letting or at the time the commitments are submitted are eligible to be used in the information furnished by the Contractor in accordance with Section 2.1.2., “Contractor’s Responsibilities.”

Certified HUBs and DBEs are eligible as SBEs.

The Texas Department of Transportation’s SBE Program is governed by 43 TAC, Chapter 9, Subchapter K, “Small Business Enterprise (SBE) Program.”

### **Determination of SBE Participation**. SBE participation will be counted toward meeting the SBE goal in this Contract in accordance with the following.

A Contractor will receive credit for all payments actually made to an SBE for work performed and costs incurred in accordance with the Contract, including all subcontracted work.

An SBE Contractor or subcontractor may not subcontract more than 75% of a Contract. The SBE must perform no less than 25% of the value of the Contract work with their own organization in accordance with Item 8.

An SBE may lease equipment consistent with standard industry practice. An SBE may lease equipment from the prime Contractor if a rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is approved by the Owner before the SBE starting the work in accordance with the following.

* If the equipment is of a specialized nature, the lease may include the operator. If the practice is generally acceptable with the industry, the operator may remain on the lessor’s payroll. The operator of the equipment must be subject to the full control of the SBE, for a short term, and involve a specialized piece of heavy equipment readily available at the jobsite.
* For equipment that is not specialized, the SBE must provide the operator and be responsible for all payroll and labor compliance requirements.

### **Records and Reports**. The Contractor must submit monthly reports of SBE payments (including payments to HUBs and DBEs) to the Owner’s Office after work begins. These reports will be due within 15 days after the end of a calendar month.

These reports will be required until all SBE subcontracting or supply activity is completed. The SBE Progress Report must be used for monthly reporting. Upon completion of the Contract and before receiving the final payment, the Contractor must submit the SBE Final Report to the Owner’s Office. These forms may be obtained from the Owner and reproduced as necessary. The Owner may verify the amounts being reported as paid to SBEs by randomly requesting copies of invoices and cancelled checks paid to SBEs. When the SBE goal requirement is not met, documentation supporting good faith efforts, in accordance with Section 2.1.2., “Contractor’s Responsibilities,” must be submitted with the SBE Final Report.

SBE subcontractors and suppliers should be identified on the monthly report by SBE certification number, name, and the amount of actual payment made to each during the monthly period. These reports are required regardless of whether SBE activity has occurred in the monthly reporting period.

All such records must be retained for 3 yr. following completion of the Contract work and be available at reasonable times and places for inspection by authorized representatives of the Owner.

### **Compliance of Contractor**. To ensure compliance with SBE requirements of this Contract, the Owner will monitor the Contractor’s efforts to involve SBEs during the performance of this Contract. This will be accomplished by a review of monthly reports submitted by the Contractor indicating their progress in achieving the SBE Contract goal and by compliance reviews conducted by the Owner.

A Contractor’s failure to comply with the requirements of this Special Provision will constitute a material breach of this Contract. In such a case, the Owner reserves the right to employ remedies as the Owner deems appropriate in the terms of the Contract.

## Article B—No SBE Goal.

### **Policy**. It is the Owner’s policy that SBEs will have an opportunity to participate in the performance of Contracts.

### **Contractor’s Responsibilities**. If there is no SBE goal, the Contractor must offer SBEs an opportunity to participate in the performance of Contracts and subcontracts. If an SBE is used, the requirements in accordance with Section 2.1.4., “Determination of SBE Participation,” will apply.

### **Prohibit Discrimination**. The Contractor and any subcontractor will not discriminate on the basis of race, color, national origin, religion, age, disability, or sex in the award and performance of Contracts. These nondiscrimination requirements must be incorporated into any subcontract and purchase order.

### **Records and Reports**. The Contractor must submit annual reports pertinent to SBEs (including HUBs and DBEs) to the Owner’s Office by August 31 or at project completion, whichever comes first.

These reports will be required until all SBE subcontracting or supply activity is completed. The SBE Progress Report must be used for reporting. Upon completion of the Contract and before receiving the final payment, the Contractor must submit the SBE Final Report to the Owner’s Office. These forms may be obtained from the Owner and reproduced as necessary. The Owner may verify the amounts being reported as paid to SBEs by randomly requesting copies of invoices and cancelled checks paid to SBEs.

SBE subcontractors and suppliers should be identified on the report by SBE certification cumber, name, and the amount of actual payment made.

All such records must be retained for 3 yr. following completion of the Contract work and be available at reasonable times and places for inspection by authorized representatives of the Owner.