



2/5/2021

Project 213000      **Addendum No. 9**  
PID No. 102329  
SUM - SR 8/IR 76/IR 77 - 0.63/9.74/8.42  
Major Reconstruction  
Letting: March 4, 2021

Notice to all Bidders and Suppliers to please be advised of the attached Proposal Addendum.

The Department utilizes Bid Express (<http://www.bidx.com>) as the official medium for electronic bid submittal. All bidders must prepare bids and submit them online via Bid Express using AASHTOWare Project Bids software.

Addenda amendments must be acknowledged in the miscellaneous section of the Project Bids file and all amendments loaded in order for your bid to be considered for award of this project. Bid express will not accept bids that do not have amendments incorporated. Failure to incorporate changed quantities or items in your Project Bids submissions will result in the rejection of your bid.

**Proposal Addendum  
For  
SR 8/IR 76/IR 77-00.63/09.74/08.42; PID 102329  
Project 213000**

**Please be advised of the following:**

**Delete: Proposal Note 007 – 07/19/2019 – Truck Leasing**

**Add: Proposal Note 007 – 1/15/2021 – DBE Trucking**

**PN 007 – 1/15/2021- DBE TRUCKING**

The Code of Federal Regulations Title 49, Section 26.55(d)(4)(5)(6) governs trucking operations.

The DBE trucking firm must be able to quote and negotiate its own prices. The DBE trucking firm must also provide a quote for each project that the firm is to be utilized toward the project DBE goal.

The DBE will be responsible for the management and supervision of their trucking operation on each contract. A DBE is not performing a CUF if the contract exists for the purpose of creating the appearance of DBE participation.

The DBE must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services the DBE provides on the contract using trucks the DBE owns, insures, and operates using drivers it employs (not 1099/independent contractors).

The Disadvantaged Business Enterprise (DBE) may lease trucks on a long term basis (a year or more), and receive full DBE credit as long as employees of the DBE operate the truck.

A lease must indicate that the DBE has exclusive use of and control over the truck, including responsibility of maintenance and insurance. This does not preclude the leased truck from working for others during the term of the lease with the DBEs consent, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the DBEs name and identification number as well.

The DBE must carry a copy of the lease agreement in the leased truck when working onsite.  
Truck Monitoring:

Credit for expenditures with DBEs for materials or supplies toward the DBE goal is described as follows:

1. A DBE firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

2. When the materials or supplies are obtained from a DBE MSV (Materials and Supplies Vendor) manufacturer the prime contractor may receive credit for 100 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a 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 contract and of the general character described by the specifications.
3. When the materials or supplies are purchased from a DBE MSV regular dealer or supplier the prime contractor may receive credit for up to 60 percent of the cost of the materials or supplies toward the DBE goal. For purposes of this section, a regular dealer or supplier 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 contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

In the past, 60% of the cost of materials and supplies purchased from a DBE MSV (100% from a DBE MSV manufacturer) would usually be counted toward DBE goals. **Effective September 1, 2018:**

- o Prime contractors must obtain information about the method of procurement for each item to be procured from a DBE MSV. The DBE Affirmation Form has been modified to accommodate this information.
- o To be eligible to receive **100% credit** toward DBE goals for a materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (**manufacturer**) NAICS code for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the **manufacture** of the item, as indicated by the information provided by the DBE MSV
- o To be eligible to receive **60% credit** toward DBE goals for a materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (**wholesale or retail**) NAICS code for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the **regular sale or lease** of the item, as indicated by the information provided by the DBE MSV
  - **The item must not be drop-shipped**
- o The above scenario applies to both bulk items (petroleum products, steel, cement, gravel, stone, asphalt, and others that ODOT may consider to be bulk items) and nonbulk items. For bulk items, there is an additional scenario whereby a contract with a DBE MSV could receive 60% credit. To be eligible to receive **60% credit** toward DBE goals for a bulk item materials and supplies subcontract:
  - The DBE MSV must be certified with the correct (**wholesale or retail and trucking**) NAICS codes for the item
  - The DBE MSV must be certified with the correct descriptor for the item
  - The role the DBE MSV will play on the specific procurement in question must be consistent with the **regular sale or lease** of the item, as indicated by the information provided by the DBE MSV
  - The DBE MSV must deliver the bulk item from a non-DBE vendor to the prime contractor using distribution equipment that it both owns (or for which it has a

long-term (1 year or more) lease) and operates with its regular (not ad hoc) employees.

- o If not eligible for 100% or 60% credit, an item may still be eligible for credit toward DBE goals, but only for the **fee or commission the DBE MSV receives for its services**, and only if the following additional criteria are met:
  - The DBE MSV must be certified with NAICS code 425120 Wholesale Trade Agents and Brokers
  - The DBE MSV must convincingly explain how the prime contractor benefits by transacting business with it rather than directly with the non-DBE vendor from which the DBE MSV is re-selling.
  - The usual good faith efforts process applies.
  - All credit toward DBE goals is conditional. Actual credit will be determined based upon invoices, receipts, and/or transportation documents/bills of lading, which must be submitted to ODOT as they are received throughout the course of the project.

### **DBE TRUCKING DISCLOSURE AFFIDAVIT**

In order to ensure that Prime Contractors are monitoring DBE trucking/hauling operations on projects with federal funding, prime contractors must complete monthly DBE Trucking Disclosure Affidavits (“Affidavit”). The Affidavit will be completed by the Prime and emailed to the District Contractor Compliance Officer (CCO) by the 10<sup>th</sup> of each month. This information will be used to affirm DBE and non-DBE trucking utilized by each DBE firm performing those duties during the previous month. ODOT will monitor trucking with the following requirements for all ODOT-let projects:

- Prime Contractors will be required to provide a master list of trucks for all anticipated DBE trucking firms to the CCO at the time of the Pre-Construction Meeting.
  - If no DBE trucking is anticipated on a project, the Prime will complete the “No Anticipated DBE Trucking Affidavit” and submit it to the CCO after the Pre-Construction meeting is held. If DBE trucking/hauling does occur, the Prime must notify the CCO within seven (7) days of the DBE trucking activity. The Prime will then complete the monthly Affidavits as required below.
- The CCO will email the Affidavit to the Prime, along with the Pre-Construction documentation. Prime Contractors will be required to complete the Affidavit disclosing the DBE trucking operations during the previous month. The Prime will return the Affidavit by the 10<sup>th</sup> day of each month (if the 10<sup>th</sup> day falls on a weekend, the deadline moves to the following Monday). They will select one of the following options on the Affidavit:
  - The DBE firm performed trucking by utilizing their own equipment and workforce and/or work was subcontracted to another DBE (i.e. only trucking that can be counted for DBE participation was utilized).
    - No other information is required. The Prime will sign and submit the Affidavit.
  - The DBE firm utilized DBE & Non-DBE trucking.
    - If selected, the Prime will provide a list of Non-DBE trucking that was utilized (i.e., not all trucking will earn DBE credit).
  - No trucking was performed.
    - No other information is required. The Prime will sign and submit the Affidavit.
- Upon receipt of the Affidavit from the Prime, the CCO will save it in the project folder on the O Drive.

- The CCOs will perform a spot check (per project) of the Affidavits. The CCOs and/or Compliance Managers will follow up on any red flags. For example, if the CCO compares information collected during the CUF process with the affidavit and sees any discrepancies.
- Trucking will continue to be monitored at project sites by construction field staff and the CCOs.

## **SANCTIONS AND ADMINISTRATIVE REMEDIES**

Failure by the prime contractor to follow the DBE Trucking Disclosure Affidavit requirements may result in the issuance of sanctions as follows:

- 1st Level Occurrence: The Department will issue a Letter of Reprimand to the contractor (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CCO within seven days of the activity );
- 2nd Level Occurrence: The Department may withhold an estimate in the amount due to the DBE trucking firm that the Affidavit was not submitted for (applies if there is a failure to submit the Affidavits and/or the Affidavits are not submitted timely; if the prime completes the No Anticipated DBE Trucking Affidavit, utilizes DBE trucking and does not notify the CCO within seven days of the activity );
- 3rd Level Occurrence: If a pattern of not submitting the Affidavit(s) persists or the Contractor has falsified, misrepresented or withheld information, ODOT can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- the Contractor's past project practices;
- the magnitude and the type of offense;
- the degree of the Contractor's culpability;
- any steps taken to rectify;
- the Contractor's record of performance on other projects; and
- the number of times the Contractor has been previously sanctioned by ODOT.

**DBE MSV DIRECTORY** - <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/DBE-Directory.aspx>  
(select MSV only)

**DBE AFFIRMATION FORM** - *The new DBE Affirmation Form is now available at*  
<http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/Resources.aspx>.