

**STATE**

**OF**

**TENNESSEE**

(Rev. 8-20-18)

(Rev. 9-7-22)

(Rev. 3-2-23)

(Rev. 5-30-24)

January 1, 2021

**SPECIAL PROVISION**

**REGARDING**

**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

The disadvantaged business enterprise (DBE) requirements of 49 CFR Part 26 apply to this contract. Accordingly, Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 26 shall have the maximum appropriate opportunity to participate in the performance of this contract or in the performance of subcontracts to this contract. In this latter regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the opportunity to compete for and perform subcontracts. The Contractor shall not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in the award of subcontracts.

The Contractor shall submit copies of all binding subcontracts and purchase orders with DBEs to the Department's Headquarters Construction Division via email at *Sub.Contracts@tn.gov* upon execution. The Contractor shall identify all DBE subcontractors at the Preconstruction Conference and indicate the approximate date for each DBE subcontractor's appearance on the project. Before terminating and/or substituting a DBE subcontractor, the Contractor must give notice in writing to the DBE subcontractor, with a copy to TDOT's Civil Rights Division Small Business Development Program (CRD-SBDP), of its intent to terminate and/or substitute including the reason for the request.

The Contractor shall provide notification to the Project Supervisor at least 24 hours prior to each DBE beginning work. The project supervisor or Inspector must complete a "Commercially Useful Function Checklist" to document the first date of work, work items, equipment, and forces of each DBE. The Contractor shall take full responsibility for the performance of a commercially useful function (CUF) by all DBE subcontractors, manufacturers, and materials suppliers who work on or provide materials for the project.

The Contractor shall enter monthly prompt payment certification to the Department through external access to AASHTOWare Project Civil Rights & Labor (CRL). The Contractor is responsible for ensuring all subcontractors, any tier, and DBE or SBE material suppliers and DBE or SBE haulers are registered for access with the Department. In addition, all subcontractors, DBE or SBE material suppliers, and DBE or SBE haulers shall acknowledge payment entry in CRL. The Prompt Payment Certification shall be submitted monthly beginning no later than sixty (60) days after payment of the first estimate. Payments must abide by the conditions set in T.C.A. § 12-4-

707.

Prior to receiving final payment, the Contractor shall provide to the project supervisor and CRD-SBDP certification of the dollars paid to each DBE firm, using Form CC3, "Certification of DBE Accomplishment." The certification shall be dated and signed by a responsible officer of the Contractor and by a responsible officer of the DBE. Falsification of this certification may result in formal enforcement actions, including civil actions for false claims, suspension and debarment proceedings, or other administrative actions affecting bidder qualifications.

The Contractor and all subcontractors shall retain, for a period of not less than three (3) years after final acceptance of a project, copies of canceled checks or other documentation that substantiates payments to DBE firms. These records shall be available at reasonable times and places for inspection by authorized representatives of the Department and various Federal Agencies.

The Contractor is advised that failure to carry out the requirements as set forth above shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract or other remedy as the Department 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 the contractor from future bidding as non-responsible.

The Title VI and nondiscrimination provisions of USDOT Order 1050.2A at Appendixes A and E are incorporated by reference. 49 CFR Part 21.