



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

February 27, 2019

SUBJECT: Route FAU 1321 (Irving Park Road)
Section 10-00055-00-WR (Streamwood)
Cook County
Contract No. 61F41
Item 144
March 8, 2019 Letting
Addendum A

NOTICE TO PROSPECTIVE BIDDERS:

Attached is an addendum to the plans or proposal. This addendum involves revised and/or added material.

- 1. Revised sheets 7, 21-24, and 50 of the Plans**
- 2. Revised pages 32, 33, 133 and 134 of the Special Provisions**
- 3. Added page 134A to the Special Provisions**
- 4. Revised the Special Provision "Disadvantaged Business Enterprise Participation" on page 162**
- 5. Revised the Schedule of Prices**

Prime contractors must utilize the enclosed material when preparing their bid and must include any changes to the Schedule of Prices in their bid.

Very truly yours,

Jack A. Elston, P.E.
Bureau Chief
Engineer of Design and Environment

A handwritten signature in black ink, reading "Ted B. Walschleger P.E." with a stylized flourish at the end.

By: Ted B. Walschleger, P.E.
Engineer of Project Management

mulched with pine bark fines. The grade, depth, and condition of the area must be approved by the Engineer prior to placement.

The Contractor shall remove all litter and plant debris, repair grade by raking and adding planter soil mix or pulverized topsoil as needed prior to mulching. Care shall be taken not to bury leaves, stems, or vines under mulch material.

All finished mulch areas shall be left smooth and level to maintain a uniform surface and appearance. After the mulch placement, any debris or piles of material shall be immediately removed from the right of way, including raking excess mulch out of turf areas. All work areas shall be clean of debris and mulch prior to leaving the site.

Submittals: A sample shall be provided prior to performing the work.

Construction Requirements: Place mulch manually around plants as follows:

Annuals: Spread one (1) inch of mulch lightly through annual plantings.

Perennials, bulbs, groundcovers, vines, grasses: Spread two (2) inches of mulch around plants. Ensure mulch is away from crowns of plants.

Shrubs, including roses: Spread three (3) inches of mulch around shrub. Ensure mulch is away from stems and crown of shrub.

Trees, shade and ornamental: Spread three (3) inches of mulch around trees. Do not pile mulch around trunk; ensure root flare is visible.

Mechanical or power mulch systems are not acceptable methods of placing shredded hardwood mulch.

Method of Measurement: Shredded hardwood bark mulch placed around existing trees will be measured in place and the area computed in square yards. Areas not meeting the depth specified shall not be measured for payment.

Basis of Payment: This work will be paid for at the contract unit price per square yard (square meter) for MULCH PLACEMENT, of the thickness specified for existing trees within the landscape improvement limits. Payment shall include all costs for materials, equipment and labor required to complete the work specified herein, including the cost of removing and disposing of any debris.

Placement of mulch for all new landscape plantings including new trees, shrubs, vines and perennials included as part of the work in other work items will not be measured separately for payment.

Pre-emergent herbicide, if required, shall be paid for separately.

LANDSCAPE EDGING

Description: This work shall consist of furnishing and installing aluminum landscape edging where indicated on the plans or as directed by the Engineer.

Materials: The materials for this work shall conform to the following requirements:

Aluminum Edging shall be 3/16” thick exposed top lip x 8” height x 16 feet long, extruded aluminum. The horizontal base shall have an upward facing angle profile designed to integrate restraint for strait-line and curvilinear application.

Finish to be Black Anodized.

Construction Methods: Edging shall be installed with 2’ of interlocking overlap between sections. Install per manufactures specifications with top of edging ¼” to ½” above finished grade. Finish grade to be compacted on either side of edging to maintain stability. Anchors shall be placed every 36” minimum with additional anchors provided as necessary to insure edging is securely fixed.

Method of Measurement: The work for LANDSCAPE EDGING will be measured for payment in feet, measured along the top of the edging as designated on the plans or as directed by the Engineer.

Basis of Payment: Landscape Edging will be paid for at the contract unit price per foot for LANDSCAPE EDGING, complete in place, including all materials, equipment, tools and labor.

TOPSOIL FURNISH AND PLACE, SPECIAL

Work under this item shall be performed in accordance with Section 200 of the Standard Specifications for Road and Bridge Construction except as modified herein.

Description: This work shall consist of furnishing, transporting, testing, preparing, and placing a mechanically pulverized and blended planter soil mix at locations shown on the plans or as directed by the Engineer.

Materials: Materials shall be according to the following except as modified herein:
Article/Section

(a) Fine Aggregate (Note 1).....	1003.06
(b) Topsoil.....	1081.05(a)

Note 1.The fine aggregate shall consist of natural sand.

General Requirements: The planter soil mix shall consist of two (2) parts pulverized topsoil and one (1) part fine aggregate (sand). The sand, in the amount required to produce an acceptable planter soil mix, shall be mechanically blended during the pulverization process. The planter soil mix shall be stored in stockpiles at the producer’s or supplier’s facility and be protected from erosion, absorption of excess water, and contamination at all times. Delivery to the job site shall only occur after the Engineer has given final approval.

The Contractor shall have the material tested following the guidelines presented below under Soil Testing and, if approved, this stockpile shall be the sole source for planting soil to be delivered to site. The test results and a Request for Inspection form should be sent to the Engineer prior to

LIGHT POLE, SPECIAL

Description. This item shall consist of furnishing and installing an aluminum light pole in accordance with the Standard Specifications for Road and Bridge Construction adopted April 1, 2016, Section 830 unless otherwise indicated in this special provision or on the Light Pole Detail as shown on the plans.

Materials.

Revise the second paragraph of Article 1069.01 of the Standard Specifications to read:

“The detailed design and fabrication of the pole shaft, arms, tenons, and attachments shall be according to AASHTO “LRFD Specifications for Structural Supports for Highway Signs, Luminaires and Traffic Signals” current at the time the project is advertised. Light poles shall be designed for ADT > 10,000 and Risk Category Typical. If Fatigue design is required, light poles shall be designed for Importance Category I.”

Revise the fifth paragraph of Article 1069.01(a) of the Standard Specifications to read:

“Deflection of the pole top as caused by the combined effect of deadload referenced above and wind speed prescribed by AASHTO shall be as required by AASHTO. Pole deflection and loading compliance, certified by the manufacturer, shall be noted on the pole submittal.”

The light pole shall be Lumec or Cyclone. The light pole shall have banner arms and/or plant support arms as shown on the plans and as determined by the Village of Streamwood.

The pole and mast arm shall be bronze textured (BRTX) and in accordance with the AAMA 2603 standard. Application of polyester powder coat paint (4 mils/100 microns) with ± 1 mils/24 microns of tolerance. The Thermosetting resins provides a discoloration resistant finish in accordance with the ASTM D2244 standard, as well as luster retention in keeping with the ASTM D523 standard and humidity proof in accordance with the ASTM D2247 standard. The surface treatment achieves a minimum of 2000 hours for salt spray resistant finish in accordance with testing performed and per ASTM B117 standard. The mast arm lengths shall be as indicated on the plans.

A recessed duplex weather-resistant receptacle shall be installed at approximately 15 ft. mounting height and shall be waterproof (with in use cover) when closed. Pole wiring shall include fusing located in the handhole. Fusing shall be according to Article 1065.01 with the exception that fuses shall be 5 ampere, each.

The light pole drawing shall be submitted to the Village of Streamwood for approval prior to manufacture and shall be inspected and approved by the Engineer as coordinated with the Village of Streamwood prior to installation.

Construction requirements. Lighting unit identification numbers shall be installed on the light poles per Engineer.

Basis of Payment. The work shall be paid for at the contract unit price per each **LIGHT POLE, SPECIAL**, which price shall include all labor, materials and equipment necessary to complete the work in place.

LIGHT POLE FOUNDATION, 24" DIAMETER, OFFSET

Description. This item shall consist of constructing and installing a 24" diameter offset light pole foundation in accordance with the Standard Specifications for Road and Bridge Construction adopted April 1, 2016, Section 836 except as specified within.

The offset foundations shall only be installed at locations as determined by the Engineer. The Contractor shall submit foundation details/drawings for approval, complete with certification of structural adequacy, prior to installation.

Method Of Measurement. LIGHT POLE FOUNDATION, 24" DIAMETER, OFFSET, will be measured for payment in feet in place along the vertical and horizontal centerlines of the foundation without overlap.

Basis Of Payment. This work will be paid for at the contract unit price per foot for **LIGHT POLE FOUNDATION, 24" DIAMETER, OFFSET** which shall be payment in full for the work specified herein.

SANITARY SERVICE REPLACEMENT

Description: This work consists of furnishing labor, equipment, and materials to remove and replace sanitary sewer services at locations determined by the Engineer in field in compliance with the requirements of Section 550 of the SSRB and the SSWS. The Contractor shall excavate and expose the existing sanitary sewer at these locations to determine the exact locations of removal and replacement. The cost for exploratory excavation will not be paid for separately but shall be considered included in the contract unit price for SANITARY SERVICE REPLACEMENT.

Materials: The new sewer pipe shall be PVC SDR 26 meeting the requirements of ASTM D-2241. Sewer bedding shall meet the requirements of Section 1004 of the SSRB, gradation CA-11 or CA-13. Couplings for joining sewers of dissimilar materials shall be non-shear flexible rubber with stainless steel bands and shall meet the approval of the Engineer.

PVC piping shall be protected from sunlight and either covered or stored indoors.

Construction Requirements: Existing sewer services may be 4 inches or 6 inches in diameter. Prior to starting any removals and replacements, the Contractor shall confer with the Engineer and present their method of removal and replacement for approval. The Engineer will designate the locations of sewers to be removed and replaced. After the Contractor exposes the sewer by excavation, the Engineer shall specify the exact length of removal and replacement required. Sewer damaged by the Contractor without prior approval by the Engineer will not be considered for payment, but shall be replaced at the Contractor's expense.

Excavation and backfill for Sanitary Sewer shall conform to the provisions of Sections 20 of the

Standard Specifications for Water & Sewer Main Construction in Illinois. Bedding class shall be Type II. Minimum burial cover shall be 42”

The excavation, bedding, pipe laying, backfilling (including trench backfill), and clean up shall be in accordance with the applicable portions of the “Standard Specifications for Water and Sewer Main Construction in Illinois”. The bedding for the pipe shall be CA-11 or CA-13 coarse aggregate, and shall be placed 6” below the pipe to 12” over the top of the pipe. The cost for the bedding shall be included in the contract unit price for the SANITARY SERVICE REPLACEMENT.

The existing sewer shall be removed with equipment and tools meeting the approval of the Engineer. Each end of the existing sewer shall be cut to provide a uniform surface for joining to the replacement sewer. All connections to trunk and laterals shall be made with flexible rubber couplings with stainless steel bands designed to connect sewers of dissimilar materials. The existing sewer must be kept in service while the repairs are made. Service laterals must be connected to the trunk sewer as the work progresses. If conditions warrant, bypass pumping may be required. Bypass pumping will not be paid for separately, but shall be included in the cost of SANITARY SERVICE REPLACEMENT.

Method Of Measurement.

This work shall be measured between the connections of the existing sanitary sewer per lineal FOOT of SANITARY SERVICE REPLACEMENT of the size and type specified.

Basis of Payment.

This work will be paid for at the contract unit price per linear FOOT for SANITARY SERVICE REPLACEMENT of the size and type specified. The price shall include all labor, tools, equipment and material including PVC pipe of size and class specified, excavation, bedding, backfilling, removal and disposal of waste excavated material and pipes, fittings, any necessary adapters and all other material necessary to complete the work as specified.

Added 2/26/19

DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION (BDE)

Effective: September 1, 2000

Revised: March 2, 2019

FEDERAL OBLIGATION. The Department of Transportation, as a recipient of federal financial assistance, is required to take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts. Consequently, the federal regulatory provisions of 49 CFR Part 26 apply to this contract concerning the utilization of disadvantaged business enterprises. For the purposes of this Special Provision, a disadvantaged business enterprise (DBE) means a business certified by the Department in accordance with the requirements of 49 CFR Part 26 and listed in the Illinois Unified Certification Program (IL UCP) DBE Directory.

STATE OBLIGATION. This Special Provision will also be used by the Department to satisfy the requirements of the Business Enterprise for Minorities, Females, and Persons with Disabilities Act, 30 ILCS 575. When this Special Provision is used to satisfy state law requirements on 100 percent state-funded contracts, the federal government has no involvement in such contracts (not a federal-aid contract) and no responsibility to oversee the implementation of this Special Provision by the Department on those contracts. DBE participation on 100 percent state-funded contracts will not be credited toward fulfilling the Department's annual overall DBE goal required by the US Department of Transportation to comply with the federal DBE program requirements.

CONTRACTOR ASSURANCE. The Contractor makes the following assurance and agrees to include the assurance in each subcontract the Contractor signs with a subcontractor.

The Contractor, subrecipient, 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 contracts funded in whole or in part with federal or state funds. 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, which may include, but is not limited to:

- (a) Withholding progress payments;
- (b) Assessing sanctions;
- (c) Liquidated damages; and/or
- (d) Disqualifying the Contractor from future bidding as non-responsible.

OVERALL GOAL SET FOR THE DEPARTMENT. As a requirement of compliance with 49 CFR Part 26, the Department has set an overall goal for DBE participation in its federally assisted contracts. That goal applies to all federal-aid funds the Department will expend in its federally assisted contracts for the subject reporting fiscal year. The Department is required to make a

good faith effort to achieve the overall goal. The dollar amount paid to all approved DBE companies performing work called for in this contract is eligible to be credited toward fulfillment of the Department's overall goal.

CONTRACT GOAL TO BE ACHIEVED BY THE CONTRACTOR. This contract includes a specific DBE utilization goal established by the Department. The goal has been included because the Department has determined the work of this contract has subcontracting opportunities that may be suitable for performance by DBE companies. The determination is based on an assessment of the type of work, the location of the work, and the availability of DBE companies to do a part of the work. The assessment indicates, in the absence of unlawful discrimination and in an arena of fair and open competition, DBE companies can be expected to perform 17.00 % of the work. This percentage is set as the DBE participation goal for this contract. Consequently, in addition to the other award criteria established for this contract, the Department will only award this contract to a bidder who makes a good faith effort to meet this goal of DBE participation in the performance of the work. A bidder makes a good faith effort for award consideration if either of the following is done in accordance with the procedures set for in this Special Provision:

- (a) The bidder documents enough DBE participation has been obtained to meet the goal or,
- (b) The bidder documents a good faith effort has been made to meet the goal, even though the effort did not succeed in obtaining enough DBE participation to meet the goal.

DBE LOCATOR REFERENCES. Bidders shall consult the IL UCP DBE Directory as a reference source for DBE-certified companies. In addition, the Department maintains a letting and item specific DBE locator information system whereby DBE companies can register their interest in providing quotes on particular bid items advertised for letting. Information concerning DBE companies willing to quote work for particular contracts may be obtained by contacting the Department's Bureau of Small Business Enterprises at telephone number (217) 785-4611, or by visiting the Department's website at:

<http://www.idot.illinois.gov/doing-business/certifications/disadvantaged-business-enterprise-certification/il-ucp-directory/index>.

BIDDING PROCEDURES. Compliance with this Special Provision is a material bidding requirement and failure of the bidder to comply will render the bid not responsive.

The bidder shall submit a DBE Utilization Plan (form SBE 2026), and a DBE Participation Statement (form SBE 2025) for each DBE company proposed for the performance of work to achieve the contract goal, with the bid. If the Utilization Plan indicates the contract goal will not be met, documentation of good faith efforts shall also be submitted. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor is selected over a DBE for work on the contract. The required forms and documentation must be submitted as a single .pdf file using the "Integrated Contractor Exchange (iCX)" application within the Department's "EBids System".

The Department will not accept a Utilization Plan if it does not meet the bidding procedures set forth herein and the bid will be declared not responsive. In the event the bid is declared not responsive, the Department may elect to cause the forfeiture of the penal sum of the bidder's proposal guaranty and may deny authorization to bid the project if re-advertised for bids.

GOOD FAITH EFFORT PROCEDURES. The contract will not be awarded until the Utilization Plan is approved. All information submitted by the bidder must be complete, accurate and adequately document enough DBE participation has been obtained or document the good faith efforts of the bidder, in the event enough DBE participation has not been obtained, before the Department will commit to the performance of the contract by the bidder. The Utilization Plan will be approved by the Department if the Utilization Plan documents sufficient commercially useful DBE work to meet the contract goal or the bidder submits sufficient documentation of a good faith effort to meet the contract goal pursuant to 49 CFR Part 26, Appendix A. This means the bidder must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. The Department will consider the quality, quantity, and intensity of the kinds of efforts the bidder has made. Mere *pro forma* efforts, in other words efforts done as a matter of form, are not good faith efforts; rather, the bidder is expected to have taken genuine efforts that would be reasonably expected of a bidder actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

- (a) The following is a list of types of action that the Department will consider as part of the evaluation of the bidder's good faith efforts to obtain participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of the Department may be relevant in appropriate cases and will be considered by the Department.
 - (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBE companies that have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBE companies to respond to the solicitation. The bidder must determine with certainty if the DBE companies are interested by taking appropriate steps to follow up initial solicitations.
 - (2) Selecting portions of the work to be performed by DBE companies in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
 - (3) Providing interested DBE companies with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- (4) a. Negotiating in good faith with interested DBE companies. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBE companies that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBE companies to perform the work.
 - b. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBE companies is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also the ability or desire of a bidder to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Bidders are not, however, required to accept higher quotes from DBE companies if the price difference is excessive or unreasonable. In accordance with the above Bidding Procedures, the documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (5) Not rejecting DBE companies as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.
 - (6) Making efforts to assist interested DBE companies in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
 - (7) Making efforts to assist interested DBE companies in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - (8) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE companies.
- (b) If the Department determines the bidder has made a good faith effort to secure the work commitment of DBE companies to meet the contract goal, the Department will award the contract provided it is otherwise eligible for award. If the Department determines the

bidder has failed to meet the requirements of this Special Provision or that a good faith effort has not been made, the Department will notify the responsible company official designated in the Utilization Plan that the bid is not responsive. The notification will also include a statement of reasons for the adverse determination. If the Utilization Plan is not approved because it is deficient as a technical matter, unless waived by the Department, the bidder will be notified and will be allowed no more than a five calendar day period to cure the deficiency.

- (c) The bidder may request administrative reconsideration of an adverse determination by emailing the Department at "DOT.DBE.UP@illinois.gov" within the five calendar days after the receipt of the notification of the determination. The determination shall become final if a request is not made on or before the fifth calendar day. A request may provide additional written documentation or argument concerning the issues raised in the determination statement of reasons, provided the documentation and arguments address efforts made prior to submitting the bid. The request will be reviewed by the Department's Reconsideration Officer. The Reconsideration Officer will extend an opportunity to the bidder to meet in person to consider all issues of documentation and whether the bidder made a good faith effort to meet the goal. After the review by the Reconsideration Officer, the bidder will be sent a written decision within ten working days after receipt of the request for reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Reconsideration Officer that a good faith effort was made shall approve the Utilization Plan submitted by the bidder and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid not responsive.

CALCULATING DBE PARTICIPATION. The Utilization Plan values represent work anticipated to be performed and paid for upon satisfactory completion. The Department is only able to count toward the achievement of the overall goal and the contract goal the value of payments made for the work actually performed by DBE companies. In addition, a DBE must perform a commercially useful function on the contract to be counted. A commercially useful function is generally performed when the DBE is responsible for the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The Department and Contractor are governed by the provisions of 49 CFR Part 26.55(c) on questions of commercially useful functions as it affects the work. Specific counting guidelines are provided in 49 CFR Part 26.55, the provisions of which govern over the summary contained herein.

- (a) DBE as the Contractor: 100 percent goal credit for that portion of the work performed by the DBE's own forces, including the cost of materials and supplies. Work that a DBE subcontracts to a non-DBE does not count toward the DBE goals.
- (b) DBE as a joint venture Contractor: 100 percent goal credit for that portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work performed by the DBE's own forces.

- (c) DBE as a subcontractor: 100 percent goal credit for the work of the subcontract performed by the DBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DBE subcontractor from the Contractor or its affiliates. Work that a DBE subcontractor in turn subcontracts to a non-DBE does not count toward the DBE goal.
- (d) DBE as a trucker: 100 percent goal credit for trucking participation provided the DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible. At least one truck owned, operated, licensed, and insured by the DBE must be used on the contract. Credit will be given for the following:
 - (1) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (2) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.
- (e) DBE as a material supplier:
 - (1) 60 percent goal credit for the cost of the materials or supplies purchased from a DBE regular dealer.
 - (2) 100 percent goal credit for the cost of materials or supplies obtained from a DBE manufacturer.
 - (3) 100 percent credit for the value of reasonable fees and commissions for the procurement of materials and supplies if not a DBE regular dealer or DBE manufacturer.

CONTRACT COMPLIANCE. Compliance with this Special Provision is an essential part of the contract. The Department is prohibited by federal regulations from crediting the participation of a DBE included in the Utilization Plan toward either the contract goal or the Department's overall goal until the amount to be applied toward the goals has been paid to the DBE. The following administrative procedures and remedies govern the compliance by the Contractor with the contractual obligations established by the Utilization Plan. After approval of the Utilization Plan and award of the contract, the Utilization Plan and individual DBE Participation Statements become part of the contract. If the Contractor did not succeed in obtaining enough DBE participation to achieve the advertised contract goal, and the Utilization Plan was approved and contract awarded based upon a determination of good faith, the total dollar value of DBE work calculated in the approved Utilization Plan as a percentage of the awarded contract value shall become the amended contract goal. All work indicated for performance by an approved DBE shall be performed, managed, and supervised by the DBE executing the DBE Participation Commitment Statement.

- (a) NO AMENDMENT. No amendment to the Utilization Plan may be made without prior written approval from the Department's Bureau of Small Business Enterprises. All requests for amendment to the Utilization Plan shall be emailed to the Department at DOT.DBE.UP@illinois.gov.
- (b) CHANGES TO WORK. Any deviation from the DBE condition-of-award or contract plans, specifications, or special provisions must be approved, in writing, by the Department as provided elsewhere in the Contract. The Contractor shall notify affected DBEs in writing of any changes in the scope of work which result in a reduction in the dollar amount condition-of-award to the contract. Where the revision includes work committed to a new DBE subcontractor, not previously involved in the project, then a Request for Approval of Subcontractor, Department form BC 260A or AER 260A, must be signed and submitted. If the commitment of work is in the form of additional tasks assigned to an existing subcontract, a new Request for Approval of Subcontractor will not be required. However, the Contractor must document efforts to assure the existing DBE subcontractor is capable of performing the additional work and has agreed in writing to the change.
- (c) SUBCONTRACT. The Contractor must provide copies of DBE subcontracts to the Department upon request. Subcontractors shall ensure that all lower tier subcontracts or agreements with DBEs to supply labor or materials be performed in accordance with this Special Provision.
- (d) ALTERNATIVE WORK METHODS. In addition to the above requirements for reductions in the condition of award, additional requirements apply to the two cases of Contractor-initiated work substitution proposals. Where the contract allows alternate work methods which serve to delete or create underruns in condition of award DBE work, and the Contractor selects that alternate method or, where the Contractor proposes a substitute work method or material that serves to diminish or delete work committed to a DBE and replace it with other work, then the Contractor must demonstrate one of the following:
- (1) The replacement work will be performed by the same DBE (as long as the DBE is certified in the respective item of work) in a modification of the condition of award; or
 - (2) The DBE is aware its work will be deleted or will experience underruns and has agreed in writing to the change. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so; or
 - (3) The DBE is not capable of performing the replacement work or has declined to perform the work at a reasonable competitive price. If this occurs, the Contractor shall substitute other work of equivalent value to a certified DBE or provide documentation of good faith efforts to do so.

- (e) TERMINATION AND REPLACEMENT PROCEDURES. The Contractor shall not terminate or replace a DBE listed on the approved Utilization Plan, or perform with other forces work designated for a listed DBE except as provided in this Special Provision. The Contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the Contractor obtains the Department's written consent as provided in subsection (a) of this part. Unless Department consent is provided for termination of a DBE subcontractor, the Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the DBE in the Utilization Plan.

As stated above, the Contractor shall not terminate or replace a DBE subcontractor listed in the approved Utilization Plan without prior written consent. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. Written consent will be granted only if the Bureau of Small Business Enterprises agrees, for reasons stated in its concurrence document, that the Contractor has good cause to terminate or replace the DBE firm. Before transmitting to the Bureau of Small Business Enterprises any request to terminate and/or substitute a DBE subcontractor, the Contractor shall give notice in writing to the DBE subcontractor, with a copy to the Bureau, of its intent to request to terminate and/or substitute, and the reason for the request. The Contractor shall give the DBE five days to respond to the Contractor's notice. The DBE so notified shall advise the Bureau and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Bureau should not approve the Contractor's action. If required in a particular case as a matter of public necessity, the Bureau may provide a response period shorter than five days.

For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor 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 subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1200 or applicable state law.

- (6) The Contractor has determined the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the projects and provides written notice to the Contractor of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the contract;
- (10) Other documented good cause that compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Contractor can self-perform the work for which the DBE contractor was engaged or so that the Contractor can substitute another DBE or non-DBE contractor after contract award.

When a DBE is terminated or fails to complete its work on the Contract for any reason, the Contractor shall make a good faith effort to find another DBE to substitute for the original DBE to perform at least the same amount of work under the contract as the terminated DBE to the extent needed to meet the established Contract goal. The good faith efforts shall be documented by the Contractor. If the Department requests documentation under this provision, the Contractor shall submit the documentation within seven days, which may be extended for an additional seven days if necessary at the request of the Contractor. The Department will provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

- (f) FINAL PAYMENT. After the performance of the final item of work or delivery of material by a DBE and final payment therefore to the DBE by the Contractor, but not later than 30 calendar days after payment has been made by the Department to the Contractor for such work or material, the Contractor shall submit a DBE Payment Agreement on Department form SBE 2115 to the Resident Engineer. If full and final payment has not been made to the DBE, the DBE Payment Agreement shall indicate whether a disagreement as to the payment required exists between the Contractor and the DBE or if the Contractor believes the work has not been satisfactorily completed. If the Contractor does not have the full amount of work indicated in the Utilization Plan performed by the DBE companies indicated in the Utilization Plan and after good faith efforts are reviewed, the Department may deduct from contract payments to the Contractor the amount of the goal not achieved as liquidated and ascertained damages. The Contractor may request an administrative reconsideration of any amount deducted as damages pursuant to subsection (h) of this part.
- (g) ENFORCEMENT. The Department reserves the right to withhold payment to the Contractor to enforce the provisions of this Special Provision. Final payment shall not be

made on the contract until such time as the Contractor submits sufficient documentation demonstrating achievement of the goal in accordance with this Special Provision or after liquidated damages have been determined and collected.

- (h) RECONSIDERATION. Notwithstanding any other provision of the contract, including but not limited to Article 109.09 of the Standard Specifications, the Contractor may request administrative reconsideration of a decision to deduct the amount of the goal not achieved as liquidated damages. A request to reconsider shall be delivered to the Contract Compliance Section and shall be handled and considered in the same manner as set forth in paragraph (c) of “Good Faith Effort Procedures” of this Special Provision, except a final decision that a good faith effort was not made during contract performance to achieve the goal agreed to in the Utilization Plan shall be the final administrative decision of the Department. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

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