



**ADDENDUM NO. 8** (Continued)

\\Appendix\C\C.01\605311\_BR(W06016).zip

Overwrote CAD files:

605311\_SK24\_BR(W06016).dwg

605311\_SK29\_BR(W06016).dwg

\\Appendix\C\C.03\

Inserted new file: Right of Way Certificate - Marion-Wareham 605311 A-8.pdf.

Please take note of the above, substitute the revised pages and plans for the originals, delete the files indicated, insert the new files into the proper folder, rename revised file, overwrite the files indicated, and acknowledge Addendum No. 8 in your Expedite Proposal file before submitting your bid.

Sincerely,

Eric M. Cardone, P.E.  
Construction Contracts Engineer

EMC\ltp

cc: Narayana Kolla, P.E., Manager Alternative Procurement and Delivery

Valerie Kilduff, P.E., Design-Build Project Manager

**MARION-WAREHAM**

Federal-Aid Project No. HIP(NGB)-003S(786)X

Bridge Replacement, M-05-001=W-06-013 & W-06-016, Marion Road/Wareham Road (Route 6)  
over Weweantic River  
Design-Build

Responses To Proposers' Questions

ADDENDUM NO. 8, December 6, 2024

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Q21) Addendum 02, Section 4.9.1 provides a table for lane restriction hours. There appears to be gaps between the windows in the table (i.e. two lanes open from 8am-7pm, and one lane open from 10pm-6am, leaving 5 hours unaccounted for). Can you please clarify?

R21) *Refer to revised RFP Volume II, Section 4.9.1 (A-8)*

Q23) Reference note 33 on Sheet 3 of the BTC Highway Drawings. Existing material properties of subgrade below the proposed embankment are mostly unknown. Can an additional unit price pay items be provided for replacement with ordinary borrow or special borrow backfill at the embankment areas, in the event existing subgrade materials do not meet specified gradation?

R23) *In the event existing subgrade materials do not meet specified gradation, compensation will be made in accordance with Section 3 of RFP Volume III, Terms and Conditions. (A-8)*

Q24) Refer to BTC drawing sheet 16 "Critical Sections STA 111+00". Section calls for minimum of 32" vertical face for turtle mitigation. Whereas, sheet 18 "Construction Detail" calls for minimum of 18" vertical face. Please clarify the minimum reveal for the turtle protection wall.

R24) *Response to be provided in a future addendum. (A-8)*

Q25) Where the 42" turtle protection fence with pedestrian handrail is shown, please clarify whether the vertical turtle protection wall is also required.

R25) *If the Proposers design allows for the elimination of wall, then the pedestrian handrail with 42" of Turtle Protection Fence may suffice, subject to MassDOT review and acceptance. (A-8)*

Q26) Can you please confirm if the steel piles for the Post and Panel Retaining Wall are allowed to be exposed to view in the finished condition or will a concrete facing be required as noted on the BTC Bridge Plans? If they can be exposed to view, will they require a specific coating?

R26) *It is not acceptable to leave the steel piles exposed. Please refer to the revised BTC Bridge Plans 9 of 9 included with this addendum for additional information. (A-8)*

Q27) The Special Provision for Item 182.2 states that asbestos abatement will be paid by the Foot but does not specify what item(s) are to be removed contains asbestos. Can MassDOT provide information on what the expected asbestos containing material is?

R27) *The existing utility conduits may contain asbestos. (A-8)*

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- Q28) The BTC plans show some drainage outfalls that have designated permanent easement areas (i.e., Parcel 26-D-S-W-1, approx. STA 102+90 RT). Others locations show the drainage and corresponding headwall/splash pad beyond the existing layout (i.e., approx. STA 96+00 LT, approx.. STA 98+10 RT, and approx. 107+30 RT). Please confirm that all Right of Way has been secured to accommodate the BTC drainage design.
- R28) *Approximate Station 96+00 LT has been revised. Revised BTC Plans to be provided in a future addendum. Approximate Station 98+10 RT and Approximate Station 107+30RT are within the permanent easement.  
All Right of Way has been secured to accommodate the BTC drainage design. (A-8)*
- Q29) There is nothing shown on the BTC plans nor in the RFP documents that indicate hold down restraints are required at the bridges. Please clarify the hold down requirements to be used in bidding this base technical concept design.
- R29) *RFP Volume II Section 4.10.4.2 includes the following sentence "The Design-Builder shall investigate if vertical tie downs are required to resist against the buoyant force during the 100-year design flood event." (A-8)*
- Q30) Response to question 12 indicates foamed glass aggregate (FGA) was used for the BTC and a design water condition where the embankment is overtopped. The hydraulic report indicates the base flood with RLSR is about El. 21.4+/- . The BTC shows a little as 6 inches of concrete cover over the FGA. In this case the FGA will be buoyant at this design water level. If this material is used is the Design-Builder required to design and install a system of tiedown anchors or similar to retain the FGA?
- R30) *The Design-Builder is required to maintain stability during construction and final condition. Normal weight fill to be placed on top of the lightweight fill and designed to counteract buoyancy. Revised BTC Highway plan typical sections to be provided in a future addendum. (A-8)*
- Q31) Based on the hydraulic report and the BTC plans the local abutment scour extends on the order of 30 to 35 feet below the bottom of the abutments. Page 40 and 46 of the approved environmental permit plans included in Appendix C.04 depict permanent sheeting to be designed for the design scour event. However, the BTC plans in the RFP do not show any permanent sheeting and the RFP does not indicate any such requirement. Will the design exception that is being prepared by MassDOT for the abutments also include an exception to Section 3.2.10.5 – Item 1 of the bridge manual such that the bridges do not need to be available for use after the scour design flood event? OR, is the design-builder required to construct permanent sheeting (or alternate wall type) with a 75-year design life as depicted in Appendix C.04 that allows the bridge to be used following a design scour event?
- R31) *As depicted in the BTC Plans, the Bridge foundations have been designed for Bridge structures to be scour stable and available for use after the design flood event by utilizing drilled shafts socketed into bedrock without relying on scour counter measures. Please also see the response provided for question 6. (A-8)*

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- Q32) The estimated NTP for the project is 3/20/25 which would result in a substantial completion date of 3/7/28. The later work activities required to complete the project such as paving, sidewalks and striping are mainly temperature sensitive and not suited for winter work. Will MassDOT extend the substantial completion date by the same number of days that the current completion date extends into the winter calendar on 2028?
- R32) *Refer to revised Milestones provided in RFP Volume II, Section 9.1. (A-8)*
- Q33) Please confirm that the superelevation information contained in the BTC highway plans is correct. It appears that there are discrepancies between the highway set and the information on both sets of bridge plans.
- R33) *Refer to revised BTC Bridge Plans 4 of 9. (A-8)*
- Q34) VOL II, 1.4.8 references a comprehensive noise analysis by HMMH. Can this report be provided for the design-builder to evaluate potential noise impact?
- R34) *See revised Section 1.4.8 in Volume II of the RFP. (A-8)*
- Q35) Please confirm that all excess earth material to be disposed of from the site will be paid for under 181. disposal unit price items, per the policy directives currently available.
- R35) *Response to be provided in a future addendum. (A-8)*
- Q36) The Final Hydraulic Report does not include a prescribed water elevation for the temporary flow conditions during construction. Has the designer done any preliminary computations and will that information be included with a future Addendum?
- R36) *No preliminary computations have been conducted for temporary flow conditions during construction. (A-8)*

**MARION-WAREHAM**

Federal-Aid Project No. HIP(NGB)-003S(786)X

Bridge Replacement, M-05-001=W-06-013 & W-06-016, Marion Road/Wareham Road (Route 6)  
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Responses To Proposers' Questions

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- Q37) Will MassDOT require the design-builder to reproduce the bathymetric survey information (re-survey)?
- R37) *Yes, the Design-Builder will be required to supplement the bathymetric survey to confirm existing conditions. (A-8)*
- Q38) The USACE Permit stipulates that "The permittee shall employ an Environmental Monitor (EM) to oversee all project activities..." Can you clarify if this is a position that is to be provided by the Design-Builder or whether this will be a 3rd party monitor who will be hired by MassDOT?
- R38) *The Design-Builder is responsible for having their own wetland specialist and environmental staff that can meet all the requirements of SWPPP inspections as well as other EM responsibilities. (A-8)*

**LIST OF ATTACHMENTS**

**A: TECHNICAL PROPOSAL FORMS**

- LETTER OF TRANSMITTAL
- STIPEND AGREEMENT
- DESIGN COST STATEMENT

**B: PRICE PROPOSAL FORMS**

- DOCUMENT B00420     PRICE PROPOSAL FORM

**C: DBE PROVISIONS AND FORMS**

- ⑧                    DOCUMENT 00719DB     SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES DESIGN BUILD
- ⑧                    DOCUMENT B00853A     DESIGN SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)
- ⑧                    DOCUMENT B00853B     CONSTRUCTION SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)
- ⑧                    DOCUMENT B00853C     OPEN ENDED SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES - CONSTRUCTION
- DOCUMENT B00854     DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION - LETTER OF INTENT
- DOCUMENT B00855     DBE JOINT CHECK ARRANGEMENT APPROVAL FORM
- DOCUMENT B00856     JOINT VENTURE AFFIDAVIT
- ⑧                    DOCUMENT B00860DB     OPEN ENDED PERFORMANCE PLAN (OEPP) SCHEDULE OF PROPOSED DBE CONTRACT EXECUTION

**D: ESCROW FORMS**

- ESCROW AGREEMENT
- ESCROW EXHIBIT 1 – BID DOCUMENTATION ASSEMBLY CERTIFICATION
- ESCROW EXHIBIT 2 – BID DOCUMENTATION DELIVERY CERTIFICATION

**E: ATC RULES ACKNOWLEDGEMENT**

**F: CONFLICT OF INTEREST**

⑧ ADDENDUM NO. 8, December 6, 2024  
 ⑥ ADDENDUM NO. 6, November 13, 2024

### 1.3 SCHEDULE OF EVENTS

The following table provides the Proposed Schedule of Events for this Project through Notice to Proceed.

**Table 1: Schedule of Events**

<b>Phase 1: Letter of Interest (LOI) and Request for Qualifications (RFQ)</b>		
<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
⑥ Advertisement of Project Request for Letter of Interest in: MassDOT Weekly AD, COMMBUYS, Local Newspapers / Central Register	1/27/2024 1/31/2024	
⑥ Letters of Interest Due	3/11/2024	12:00 PM
RFQ Mailed to Interested Parties Submitting a LOI	2/28/2024	
RFQ Briefing (Virtual by email invitation)	3/13/2024	10:00 AM to 12:00 PM
MassDOT A&E Construction Prequalification Applications Due	3/8/2024	5:00 PM
RFQ Close date for questions	3/15/2024	12:00 PM
Statements of Qualifications Due	3/29/2024	12:00 PM
Design-Builders Short-Listed	6/26/2024	
Design-Builders Notified	5/1/2024	
<b>Phase 2: Request for Proposals (RFP)</b>		
<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
FINAL RFP Issued to Short-Listed Design-Builders	9/12/2024	
Confidential RFP Meeting (Virtual)	9/24/2024	
Mandatory Pre-Proposal Meeting (Virtual, by email invitation)	10/08/2024	10:00AM - 12:00 PM
ATC Meeting – 1	10/16/2024	TBD
ATC Meeting – 2	11/06/2024	TBD
ATC Meeting – 3	TBD	
Last Day to Submit Final ATCs	11/19/2024	
RFP Close date for Questions	12/03/2024	
Technical & Price Proposals Due	12/19/2024	2:00 PM
⑧ Oral Presentations	<b>1/15/2025</b>	TBD
⑧ Public Price Proposal Opening Date	<b>1/30/2025</b>	<b>11:00 AM</b>
⑧ Anticipated Award Date	TBD	
⑧ Anticipated Notice to Proceed	<b>4/03/2025</b>	

**\*Schedule will be provided in advance of the Presentations**

### 3.4 PRICE PROPOSAL

The Price Proposal shall be submitted through the Bid Express on-line bidding exchange at <http://www.bidx.com/>. Electronic bid files are provided through the Bid Express on-line bidding exchange at <http://www.bidx.com/>. The Proposer shall follow the on-line instructions and review the help screens provided to assure that the schedule of items is prepared properly. The Proposer shall download and acknowledge any and all addenda files prior to submitting their final bid. Price Proposals shall be submitted in accordance with the requirements of the Bid Express Web Site.

At the designated time of Price Proposal submittal, the Bid Express web site requires a completed set of proposal forms submitted by the Proposer which includes the price proposal sheets (Document B00420), bid bond, addendum acknowledgement, and affidavit of non-collusion acknowledgement.

#### 3.4.1 BID BOND

Every Proposal must be accompanied by a bid deposit in the form of a bid bond, or cash, certified check, or a treasurer's or cashier's check issued by a responsible bank or trust company, payable to the awarding authority, MassDOT. The amount of such a bid deposit shall be 5 percent of the value of the Price Proposal. Bid Bonds shall be submitted in accordance with Subsection 2.0 of the *MassDOT Standard Specifications for Highways and Bridges, 2024* and the instructions posted on the Bid Express Web Site.

#### 3.4.2 PAYOUT SCHEDULE

This Design-Build Project is a lump sum contract. Payments shall be made through a payout schedule based on major work items or tasks and in conjunction with Section 9.0 of RFP Volume II – Technical Provisions.

The Proposer's Price Proposal shall include:

- The base bid to include one lump sum cost for all design, construction, and construction engineering and Quality Control system, as required, and any warranties required.
- Individual unit costs for bid items identified in the Price Proposal Form contained in Attachment B: Document B00420 Price Proposal Forms. These unit costs are intended to be used by MassDOT to validate the Proposer's Price Proposal. The Fixed Price established for Item 100. Schedule of Operations shall be entered as the unit cost. Please note: the unit price contained in each bid item is "all inclusive" (i.e. includes all costs associated with the item). These costs shall include, but not be limited to: design, engineering, project management, Quality Control, equipment procurement, ancillary equipment, transport, installation, integration, utilities, traffic protection, warranty, bonds, insurance and incidentals.
- DBE Schedule of Participation and Letter of Intent. (NOTE: DBE forms to be submitted by the two (2) lowest Best Value Proposers in accordance with Document 00719DB)
- Non-collusion certificate. (NOTE: Submitted as part of the AASHTOWare Project Bids Submission per Section 2.5)
- Document B00420 – Price Proposal Form

⑧

- ⑧ ADDENDUM NO. 8, December 6, 2024
- ⑥ ADDENDUM NO. 6, November 13, 2024
- ① ADDENDUM NO. 1, September 30, 2024

## 5.6 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

Disadvantaged Business Enterprises (DBEs), as defined by 49 CFR 26, shall have the opportunity to participate in the performance of Design-Build Contracts financed in whole or in part with Federal funds.

The DBE participation Goal for this Project is as follows:

- ①
  - DBE firms perform no less than fourteen (14%) percent of design services.
  - DBE firms perform no less than fourteen (14%) percent of construction services. A minimum of one-half of the goal for construction shall be met in the form of construction activity. The DBE participation goal shall remain in effect throughout the life of the Contract.
- ⑧⑥ For Design DBE work, each Proposer is required to identify in its Proposal the DBE(s) selected and work to be performed by each DBE (in Attachment C Document B00853A).
- ⑧ For Construction DBE work (as stipulated in Document 00719DB) each Proposer is required to identify in its Proposal either the work to be performed by selected DBE firms (in Document B00853B) or may elect to provide a description of targeted Construction DBE Activities of an Open Ended Performance Plan (OEPP, Document B00853C). The Proposer may also provide some combination of both, Documents B00853B and B00853C, which in sum must equal construction DBE participation goals. Further details regarding OEPPs can be found in Attachment C, Document 00719DB.
- ⑧ If the Proposer elects to implement an OEPP for DBE Construction, the OEPP must also include a narrative that indicates the methodology used to establish the proposed activities and dollar amounts listed in (Document B00853C) and in the Schedule of Proposed DBE Contract Execution (Document B00860DB)
- ⑥ DBE participation to be counted toward the goal must be in the form of independent work and DBE firms must be certified by the Massachusetts Uniform Certification Program (MassUCP), at the time of the Proposal.

If MassDOT finds that the percentage of DBE participation submitted by the Proposer will not meet the DBE goal of the Contract and that the Proposer has not made good faith efforts to meet the goal, MassDOT may, at its discretion, cease all further action with the Proposer.

Certified Disadvantage Business Enterprises (DBEs) may be located at

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

- ⑧ DBE Special Provisions are included in RFP Volume I, Attachment C. Forms B00853A, B00853B, B00853C, B00854, and B00860DB included in Attachment C, must be submitted in accordance with Document 00719DB for both design **and** construction participation goals.

ADDENDUM NO. 8, December 6, 2024

Address questions regarding DBE requirements to:

Darnell L. Williams  
Deputy Chief Diversity Officer - External Programs  
MassDOT Office of Diversity and Civil Rights (ODCR)  
10 Park Plaza, Room 3800  
Boston, MA 02116-3973  
Telephone: (617) 872-6497  
Email: [Darnell.Williams@dot.state.ma.us](mailto:Darnell.Williams@dot.state.ma.us)

## 5.7 NONDISCRIMINATION

The Design-Builder shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of Subcontractors, including procurement of materials and leases of equipment placed under the Contract.

The Design-Builder and its respective Subcontractors shall assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training.

In the event of the Design-Builder's noncompliance with the nondiscrimination requirements stipulated by the Required Contract Provisions this will be considered a material breach of this Contract and may result in the termination or suspension of the Contract, in whole or in part, or such sanction or remedy deemed appropriate by the MassDOT, as provided by law, rule or regulation.

The Design-Builder shall insert these stipulations, as contained in the Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made.

## 5.8 INSURANCE AND RISK MANAGEMENT

Prior to Contract Award, the apparent successful Proposer shall indicate methods of complying with the liability and insurance requirements of the MassDOT Standard Specifications for Highways and Bridges, 2024 Edition, and the additional types and amounts of insurance required under Section 18 of RFP Volume III, "Draft Contract – Terms and Condition."

Ⓢ ADDENDUM NO. 8, December 6, 2024  
Ⓢ ADDENDUM NO. 5, November 1, 2024

DOCUMENT B00420

PROPOSAL

MARION-WAREHAM

For: **Bridge Replacement, M-05-001=W-06-013 & W-06-016, Marion Road/Wareham Road  
(Route 6) Over Weweantic River,  
Design-Build**

COMMONWEALTH OF MASSACHUSETTS

LOCATION

The work referred to herein is in the Towns of Marion-Wareham in Plymouth County, in the Commonwealth of Massachusetts, and is shown by the locus map (Document 00331) provided in RFP Volume II, Appendix D, the work locations extend as follows:

MARION

**Route 6 (Wareham Street)**

**Beginning – Station 87+68 ±**

WARHAM

**Route 6 (Marion Road)**

**Ending – Station 117+00 ±**

- ⓈⓈ The contract prices shall include the furnishing of all materials (except as otherwise herein specified), the performing of all the labor requisite or proper, the providing of all necessary machinery, tools, apparatus and other means of construction, the doing of all the abovementioned work in the manner set forth, described and shown in the specifications and on the drawings for the work, and in the form of contract, and the completion thereof within **1,264 CALENDAR DAYS** upon receipt of a Notice to Proceed.

The Work of this Project is described by the following Items and quantities.

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DOCUMENT 00719DB

*(Revised November 22, 2024 – for all Design-Build Federally Aided Projects)*

**SPECIAL PROVISIONS FOR PARTICIPATION BY  
DISADVANTAGED BUSINESS ENTERPRISES  
DESIGN-BUILD**

(IMPLEMENTING TITLE 49 OF THE CODE OF FEDERAL REGULATIONS, PART 26)

Section: Page 00719DB-

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## POLICY

The Massachusetts Department of Transportation (MassDOT) receives Federal financial assistance from the Federal Highway Administration (FHWA), United States Department of Transportation (U.S. DOT), and as a condition of receiving this assistance, has signed an assurance that it will comply with 49 CFR Part 26 (Participation By Disadvantaged Business Enterprises In Department Of Transportation Financial Assistance Programs). The U.S. DOT Disadvantaged Business Enterprise Program is authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (“SAFETEA-LU”), as amended, at Title 23, United States Code, § 1101.

Accordingly, MassDOT has established a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 CFR Part 26. It is the policy of MassDOT to ensure that DBEs have an equal opportunity to receive and participate in U.S. DOT assisted Contracts, without regard to race, color, national origin, or sex. To this end, MassDOT shall not directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the program objectives stated below:

- ◆ To ensure nondiscrimination in the award and administration of U.S. DOT assisted Contracts;
- ◆ To create a level playing field on which DBEs can compete fairly for U.S. DOT assisted Contracts;
- ◆ To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- ◆ To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- ◆ To help remove barriers to the participation of DBEs in U.S. DOT assisted Contracts; and
- ◆ To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Director of Civil Rights of MassDOT has been designated as the DBE Liaison Officer. The DBE Liaison Officer is responsible for implementing all aspects of the DBE Program. Other MassDOT employees are responsible for assisting the Office of Civil Rights in carrying out this obligation. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by MassDOT in its financial assistance agreements with each operating administration of the U.S. DOT. Information on the Federal requirements and MassDOT’s policies and information can be found at:

<i>Type of Info</i>	<i>Website</i>	<i>Description</i>
MassDOT Highway Division Policies and Info	<a href="https://www.mass.gov/disadvantaged-business-enterprise-goals-2019-2022">https://www.mass.gov/disadvantaged-business-enterprise-goals-2019-2022</a>	MassDOT– Highway Div’n Page
For copies of the Code of Federal Regulations	<a href="http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR">http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR</a>	FDsys – US Gov’t Printing Office
For information about the U.S.DOT DBE Program	<a href="https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise">https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise</a>	U.S. DOT/ FHWA page

## 1. DEFINITIONS

As used in these provisions, the terms set out below are defined as follows:

“Broker”, for purposes of these provisions, shall mean a DBE Entity that has entered into a legally binding relationship to provide goods or services delivered or performed by a third party. A broker may be a DBE Entity that arranges or expedites transactions but performs no work or installation services.

“Contractor”, “General” or “Prime” Contractor, “Bidder,” “Proposer”, and “Design-Builder” shall mean a person, firm, or other entity that has contracted directly with MassDOT to provide contracted work or services.

“Contract” shall mean the Contract for work between the Contractor and MassDOT.

“DBB” or “Design-Bid-Build” shall mean the traditional design, bid and project delivery method consisting of separate contracts between awarding authority and a designer resulting in a fully designed project; and a separate bidding process and Contract with a construction Contractor or Bidder.

“DB” or “Design-Build” shall mean an accelerated design, bid and project delivery method consisting of a single contract between the awarding authority and a Design-Builder, consisting of design and construction companies that will bring a project to full design and construction.

“Disadvantaged Business Enterprise” or “DBE” shall mean a for-profit, small business concern:

- (a) that is at least fifty-one (51%) percent owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of any corporation, in which at least fifty-one (51%) percent of the stock is owned by one or more such individuals; and
- (b) where the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

“FHWA” shall mean the Federal Highway Administration,” an agency within U.S. DOT that supports State and local governments in the design, and maintenance of the Nation’s highway system (Federal Aid Highway Program).

“Good faith efforts” shall mean efforts to achieve a DBE participation goal or other requirement of these Special Provisions that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Such efforts must be deemed acceptable by MassDOT.

“Joint Venture” shall mean an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the Contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Approved Joint Venture" shall mean a joint venture, as defined above, which has been approved by MassDOT's Prequalification Office and Office of Civil Rights for DBE participation on a particular Contract.

"Manufacturer" shall mean 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.

"Regular Dealer" shall mean a DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which 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.

- (a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business, and under its own name, in the purchase and sale of the products in question.
- (b) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by long term lease agreement and not on an ad hoc or contract by contract basis.
- (c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this definition.

"Responsive" and "Responsible" refers to the bidder's submittal meeting all of the requirements of the advertised request for proposal. The term responsible refers to the ability of the Contractor to perform the work. This ability can be determined prior to bid invitations.

"Small Business or Small Business Concern" shall mean a small business concern or company as defined in Section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121); and is a business that does not exceed the cap on annual average gross receipts established by the U.S. Secretary of Transportation pursuant to 49 CFR Part 26.65; see also 49 CFR Part 26.39.

"SDO" shall mean the Massachusetts Supplier Diversity Office, formerly known as the State Office of Minority and Women Business Assistance (SOMWBA). In 2010, SOMWBA was abolished and the SDO was established. *See* St. 2010, c. 56. The SDO has assumed all the functions of SOWMBA. SDO is an agency within the Commonwealth of Massachusetts Executive office of Administration and Finance (ANF) Operational Services Division (OSD). The SDO mandate is to help promote the development of business enterprises and non-profit organizations owned and operated by minorities and women.

"Socially and economically disadvantaged individuals" shall mean individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are:

- (a) Individuals found by SDO to be socially and economically disadvantaged individuals on a case by case basis.
- (b) Individuals in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

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- (1) "Black Americans" which includes persons having origin in any of the Black racial groups of Africa;
- (2) "Hispanic Americans" which include persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (3) "Native Americans" which include persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (4) "Asian Pacific Americans" which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) Women; or
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

Other terms and definitions applicable to the U.S. DOT DBE Program may be found at 49 CFR Part 26 and related appendices and guidance pages.

## 2. DBE PARTICIPATION

### a. Goal

On this Contract, MassDOT has established the following goal(s) for participation by firms owned and controlled by socially and economically disadvantaged persons. At least half of the goal must be met in the form of DBE Subcontractor construction activity as opposed to material supplies or other services. The applicable goal remains in effect throughout the life of the Contract regardless of whether pre-identified DBE Subcontractors remain on the Project or under Contract.

DBE Design Participation Goal 14 % and

DBE Construction Participation Goal 14 %

*(One half of the Construction Goal shall be met in the form of Subcontractor construction activity)*

### b. Bidders List

Pursuant to the provisions of 49 CFR Part 26.11(c), Recipients such as MassDOT, must collect from all Bidders who seek work on Federally assisted Contracts the firm full company name(s), addresses and telephone numbers of all firms that have submitted bids or quotes to the Bidders in connection with this Project. All bidders should refer to the Special Provision Document "A00801" of the Project proposal for this requirement.

In addition, MassDOT must provide to U.S. DOT, information concerning contractors firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm within a series of brackets (e.g., less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million, etc.). The status, firm age, and annual gross receipt information will be sought by MassDOT regularly prior to setting its DBE participation goal for submission to U.S. DOT. MassDOT will survey each individual firm for this information directly.

Failure to comply with a written request for this information within fifteen (15) business days may result in the suspension of bidding privileges or other such sanctions, as provided for in Section 9 of this provision, until the information is received.

### **3. CONTRACTOR ASSURANCES**

No Contractor or any Subcontractor shall 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 all respects and as applicable prior to, or subsequent to, award of U.S. DOT assisted Contracts. The Contractor agrees to affirmatively seek out and consider DBE firms as Contractors, Subcontractors, and/or suppliers of materials and services for this Contract. No Contract will be approved until MassDOT has reviewed Bidders'/Contractors' affirmative actions concerning DBEs. Failure to carry out these requirements is a material breach of this Contract which may result in the termination of the Contract or such other remedy as MassDOT or FHWA deem appropriate.

### **4. REQUIRED SUBCONTRACT PROVISIONS**

The Prime Contractor shall include the provisions of Section 3 above in every subcontract, making those provisions binding on each Subcontractor; in addition, the Prime Contractor shall include a copy of this Special Provision, in its entirety, in every subcontract with a DBE firm which is, or may be, submitted for credit toward the Contract participation goal.

### **5. ELIGIBILITY OF DBES**

Only firms that have been certified by Massachusetts Uniform Certification Program (MassUCP), and confirmed by MassDOT as eligible in accordance with 49 CFR Part 26 to participate as DBEs on federally aided MassDOT Contracts may be used on this Contract for credit toward the DBE participation goal.

#### **a. Massachusetts DBE Directory**

MassDOT makes available to all bidders the most current Massachusetts Disadvantaged Business Enterprise Directory. This directory is made available for Contractors' convenience and is informational only. The Directory lists those firms that have been certified as eligible in accordance with the criteria of 49 CFR Part 26 to participate as DBEs on federally aided MassDOT contracts. The Directory also lists the kinds of work each firm is certified to perform but does not constitute an endorsement of the quality of performance of any business and does not represent MassDOT Subcontractor approval.

Contractors are encouraged to make use of the DBE Directory maintained by SDO on the Internet.

This listing is updated daily and may be accessed at the SDO's website at:

<https://www.diversitycertification.mass.gov/BusinessDirectory/BusinessDirectorySearch.aspx>

#### **b. DBE Certification**

A firm must apply to MassUCP, currently acting as certification agent for MassDOT, for DBE certification to participate on federally aided MassDOT Contracts. A DBE application may be made in conjunction with a firm's application to SDO for certification to participate in state-funded minority and women business enterprise programs or may be for DBE certification only. An applicant for DBE certification must identify the area(s) of work it seeks to perform on U.S. DOT funded projects.

### **c. Joint Venture Approval**

To obtain recognition as an approved DBE Joint Venture, the parties to the joint venture must provide to MassDOT's Office of Civil Rights and Prequalification Office, at least fourteen (14) business days before the bid opening date, an Affidavit of DBE/Non-DBE Joint Venture in the form attached hereto, and including, but not limited to the following:

1. a copy of the Joint Venture Agreement;
2. a description of the distinct, clearly defined portion of the Contract work that the DBE will perform with its own forces; and,
3. all such additional information as may be requested by MassDOT for the purpose of determining whether the joint venture is eligible.

### **6. COUNTING DBE PARTICIPATION TOWARDS DBE PARTICIPATION GOALS**

In order for DBE participation to count toward the Contract participation goal, the DBE(s) must have served a commercially useful function in the performance of the Contract and must have been paid in full for acceptable performance.

#### **a. Commercially Useful Function**

- (1) In general, a DBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. With respect to materials and supplies used on the Contract, the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material, installing (where applicable) and paying for the material itself.
- (2) To determine whether a DBE is performing a commercially useful function, MassDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- (3) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, MassDOT will examine similar transactions, particularly those in which DBEs do not participate.

#### **b. Counting Participation Toward The Contract Participation Goal**

DBE participation which serves a commercially useful function shall be counted toward the DBE participation goal in accordance with the Provisions of 49 CFR Part 26.55(a) to (h), as follows:

- (1) When a DBE participates in a construction Contract, MassDOT will count the value of the work performed by the DBE's own forces. MassDOT will count the cost of supplies and materials obtained by the DBE for the work of its contract, including supplies purchased or equipment leased by the DBE. Supplies, labor, or equipment the DBE Subcontractor uses, purchases, or leases from the Prime Contractor or any affiliate of the Prime Contractor will not be counted.

- (2) MassDOT will count the entire amount of fees or commissions charged by a DBE firm for providing bona fide services, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a U.S. DOT assisted Contract, toward DBE participation goals, provided it is determined that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a DBE performs as a participant in a joint venture, MassDOT will count toward DBE participation goals a portion of the total dollar value of the Contract that is equal to the distinct, clearly defined portion of the work of the Contract that the DBE performs with its own forces.
- (4) MassDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
  - (i) the DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract; there cannot be a contrived arrangement for the purpose of meeting DBE participation goals.
  - (ii) the DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract.
  - (iii) the Contractor will receive DBE credit for the total value of the transportation services the DBE provides on the Contract using trucks owned, insured, and operated by the DBE itself and using drivers the DBE employs alone.
  - (iv) the DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The Contractor who has a contract with a DBE who leases trucks from another DBE will receive credit for the total value of the transportation services of the lease.
  - (v) the DBE may also lease trucks from a non-DBE firm, including an owner-operator. The Contractor who has a Contract with a DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the Contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement, fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
  - (vi) the lease must indicate that the DBE has exclusive use of, and control over, the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

- (5) MassDOT will count the Prime Contractor's expenditures with DBEs for materials or supplies toward DBE participation goals as follows:
- (i) if the materials or supplies are obtained from a DBE manufacturer, as defined in Section 1 above, MassDOT will count one hundred (100%) percent of the cost of the materials or supplies toward DBE participation goals, provided the DBE meets the other requirements of the regulations.
  - (ii) if the materials or supplies are purchased from a DBE regular dealer, as defined in Section 1 above, MassDOT will count sixty (60%) percent of the cost of the materials or supplies toward the Contract participation goal, provided the DBE meets the other requirements of the regulations.
  - (iii) for materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, MassDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site toward the Contract participation goal, provided that MassDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services; the cost of the materials and supplies themselves will not be counted; and provided the DBE meets the other requirements of the regulations.

### **c. Joint Check Policy**

MassDOT recognizes that the use of joint checks may be a business practice required by material suppliers and vendors in the construction industry. A joint check is a two-party check issued by a/the Prime Contractor to a DBE third party such as a regular dealer of material or supplies. The Prime Contractor issues the check as payor to the DBE and the third party jointly as payees to guarantee payment to the third party for materials or supplies obtained or to be used by the DBE. FHWA has established criteria to ensure that DBEs are in fact performing a commercially useful function ("CUF") while using a joint check arrangement. Contractors and DBEs must meet and conform to these conditions and criteria governing the use of joint checks.

In the event that a Contractor or DBE Subcontractor desires to use a joint check, MassDOT will require prior notice and will closely monitor the arrangement for compliance with FHWA regulations and guidance. MassDOT may allow a joint check arrangement and give credit to a Contractor for use of the DBE where one or more of the following conditions exist:

- The use of a joint check is in fact required by this type of vendor or supplier as a standard industry practice that applies to all Contractors (DBEs and non-DBEs); or is required by a specific vendor or supplier;
- Payment for supplies or materials would be delayed for an unreasonably extended period without the joint check arrangement;
- The DBE (or any of its Subcontractors) has a pattern or history of not paying a vendor or supplier within a reasonable time or has not established enough of a credit history with the supplier or vendor; and/or
- The presence of severe adverse economic conditions, where credit resources may be limited and such practices may be necessary or required to effect timely payments.

Other factors MassDOT may consider:

- Whether there is a requirement by the Prime Contractor that a DBE should use a specific vendor or supplier to meet their Subcontractor specifications;
- Whether there is a requirement that a DBE use the Prime Contractor's negotiated price;
- The independence of the DBE;
- Whether approval has been sought prior to use of a joint check arrangement; and
- Whether any approved joint check arrangement has exceeded a reasonable period of use;
- The operation of the joint check arrangement; and
- Whether the DBE has made an effort to establish alternate arrangements for following periods ( i.e., the DBE must show it can, or has, or why it has not, established or increased a credit line with the vendor or supplier).

Even with the use of a Joint Check, both the Contractor and DBE remain responsible for compliance with all other elements under 49 CFR § 26.55 (c) (1), and must still be able to prove that a commercially useful function is being performed for the Contractor.

#### **d. Joint Check Procedure(s)**

- The DBE advises its General or Prime Contractor that it will have to use a Joint Check and provide proof of such requirement.
- The General or the Prime Contractor submits a request for approval to MassDOT, using MassDOT's approved Joint Check Request form (Document B00855) and by notification on the DBE Letter of Intent (Document B00854), and any other relevant documents. Requests that are not initiated during the bid process should be made in writing and comply with the procedure.
- The MassDOT Office of Civil Rights will review the request and render a decision as part of the approval process for DBE Schedules and Letters of Intent.
- Review and Approval will be project specific and relevant documents will be made part of the project Contract file.
- Payments should be made in the name of both the DBE and vendor or supplier. Payments should be issued and signed by the Contractor as only the guarantor for prompt payment of purchases to the vendor or supplier. The payment to the vendor or supplier should be handled by the DBE (i.e. if possible, funds or the joint check should be processed by the DBE and sent by the DBE to the vendor or supplier).
- MassDOT may request copies of cancelled checks (front and back) and transmittal information to verify any payments made to the DBE and vendor or supplier.
- MassDOT may request other information and documents, and may ask questions of the Contractor, Subcontractor and vendor or supplier prior to, during, and after the project performance to ascertain whether the Subcontractor is performing a commercially useful function and all parties are complying with DBE Program policies and procedures as part of the Subcontractor approval process.

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## 7. AWARD DOCUMENTATION AND PROCEDURES

- a. The two proposers with the lowest price per quality score point, shall submit, by the close of the third (3rd) business day after the bid opening, the following completed DBE documentation:
1. Completed Design Schedule(s) of Participation (Document B00853A) and Letters of Intent (Document B00854) for Design.
  2. Completed Open Ended Construction Schedule(s) of Participation (Document B00853C).
  3. (Optional) Completed Construction Schedule(s) of Participation (Document B00853B) and Letters of Intent (Document B00854)
  4. Completed Schedule of Proposed DBE Contract Execution (Document B00860DB)
  5. Any other DBE documentation as specified in the DBE section of the RFP Volume I

The Proposer must be responsive in submitting required documentation and forms and ensure that all information is timely, complete, accurate and truthful. The Proposer must provide participation information to the fullest extent possible; but may establish participation milestones and develop reasonably-close participation estimates with supporting justification, as appropriate, where participation information cannot be fully-finalized at time of Award. At a minimum, commitments must be made for all DBE Design opportunities.

Where making commitments to firms for all DBE Construction opportunities (Document B00853B) is not practical prior to submission of the Price Proposal, commitments of specific work items must be identified in an Open Ended Schedule of Participation (Document B00853C). Use of Document B00853C renders all DBE documentation part of an Open-Ended Performance Plan (OEPP). If the Proposer chooses to use an OEPP, DBE construction contracts must be executed by the time design is complete. The Proposer must identify the anticipated timeframe in which DBE contracts will be executed, through the Schedule of Proposed DBE Contract Execution (Document B00860DB); please note that the schedule should reflect the fact that DBE contracts must be executed by the time design is complete.

- b. All firms listed on the Schedule of Participation form must be currently certified.
- c. The two Proposers with the lowest price per quality score point, shall each submit, with their Schedules of Participation, fully completed, signed Letters of Intent (Document B00854) from each of the DBEs listed on the Schedule. The Letters of Intent shall be in the form attached and shall identify specifically the Contract activity the DBE proposes to perform, expressed as contract item number, if applicable, description of the activity, NAICS code, quantity, unit price and total price. In the event of discrepancy between the Schedule and the Letter of Intent, the Letter of Intent shall govern.
- d. Evidence of good faith efforts will be evaluated by MassDOT in the selection of the lowest responsible Proposer.

All information requested by MassDOT for the purpose of evaluating the Proposer's efforts to achieve the participation goal must be provided within three (3) calendar days and must be accurate and complete in every detail. The apparent low bidder's attainment of the DBE participation goal or a satisfactory demonstration of good faith efforts is a prerequisite for Award of the Contract.

- e. Failure to meet, or to demonstrate good faith efforts to meet, the requirements of these Special Provisions shall render a bid non-responsive. Therefore, in order to be eligible for Award, the Proposer:
  - 1. Must list all DBE's it plans to employ on the Schedule of Participation (along with the required Letters of Intent) and an OEPP (if the Proposer elects to implement an OEPP). These documents must reflect DBE participation which meets or exceeds the Contract participation goal in accordance with the terms of these Special Provisions; or
  - 2. Must demonstrate, to the satisfaction of MassDOT, that good faith efforts were made to achieve the participation goal. MassDOT will adhere to the guidance provided in Appendix A to 49 CFR Part 26 on the determination of a Proposer's good faith efforts to meet the DBE participation goal(s) set forth in Section 2 herein.
- f. If MassDOT finds that the percentage of DBE participation submitted by the Proposer does not meet the Contract participation goal, or that the any other required documentation was not timely filed, and that the Proposer has not demonstrated good faith efforts to comply with these requirements, it shall propose that the Proposer be declared ineligible for Award. In that case, the Proposer may request administrative reconsideration. Such requests must be sent in writing within three (3) calendar days of receiving notice of proposed ineligibility to: The Office of the General Counsel, Massachusetts Department of Transportation, 10 Park Plaza, Boston, MA, 02116.
- g. If, after administrative reconsideration, MassDOT finds that the Proposer has not shown that sufficient good faith efforts were made to comply with the requirements of these Special Provisions, it shall reject the Proposer's proposal and may retain the proposal guaranty.
- h. Actions which constitute evidence of good faith efforts to meet a DBE participation goal include, but are not limited to, the following examples, which are set forth in 49 CFR Part 26, Appendix A:
  - (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 DBEs who have the capability to perform the work of the Contract. The Proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE participation goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Prime Contractor might otherwise prefer to perform these work items with its own forces.

- (3) Providing interested DBEs 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) Negotiating in good faith with interested DBEs. It is the proposer'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 number of DBEs 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 DBEs to perform the work.

A proposer 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 participation goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the Contract DBE participation goal, as long as such costs are reasonable. Also, the ability or desire of a Prime Contractor to perform the work of a Contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. Contractors should be careful of adding additional requirements of performance that would in effect limit participation by DBEs or any small business. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the Contract participation goal.
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- (7) Making efforts to assist interested DBEs 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 DBEs.

## 8. COMPLIANCE

- a. For Design-Build contracts with OEPP's, the successful Design-Builder shall submit an updated OEPP with a progress narrative on a monthly basis with payment requests. The monthly progress narrative should compare actual efforts to secure DBE participation through the use of a solicitation log (example provided...) against the Schedule of Proposed DBE Contract Execution (Document B00860DB).

The successful Design-Builder shall finalize the OEPP with a completed Construction Schedule of Participation (Document B00853B) and executed DBE contracts, no later than when the design is complete. If this milestone is not met, the Design-Builder shall submit a written request for modifying the Proposed Schedule of Proposed DBE Contract Execution (Document B00860DB), with proper documentation of good faith efforts, to MassDOT for review and approval.

If the Design-Builder fails to update the OEPP as required by the Contract, the Department may suspend Contract payments in accordance with Contract Volume I, Section 2

- b.** All activity performed by a DBE for credit toward the Contract participation goal must be performed, managed and supervised by the DBE in accordance with all commercially useful function requirements of 49 CFR Part 26. The Prime Contractor shall not enter into, or condone, any other arrangement.
- c.** The Prime Contractor shall not perform with its own organization, or assign to any other business, an activity designated for the DBE(s) named on the Schedule(s) submitted by the Prime Contractor under Section 7 or under paragraph **8.g** of this section, without the approval of MassDOT in accordance with the requirements of paragraphs **8.g** and **8.k** of this section.
- d.** MassDOT may suspend payment for any activity that was not performed by a DBE to whom the activity was committed on the approved Schedule of Participation (Document B00853B), Open Ended Schedule of Participation (Document B00853C), or that was not performed in accordance with the requirements of Section 6.
- e.** MassDOT retains the right to approve or disapprove of any or all Subcontractors. Requests by the Prime Contractor for approval of participation by a DBE Subcontractor for credit toward the Contract participation goal must include, in addition to any other requirements for Subcontractor approval, the following:

  - (1) A copy of the proposed subcontract. The subcontract must be for at least the dollar amount, and for the work described, in the Bidder's Schedule of Participation.
  - (2) A resume stating the qualifications and experience of the DBE Superintendent and/or foreperson who will supervise the on-site work. A new resume will be required for any change in supervisory personnel during the progress of the work.
  - (3) A Schedule of Operations indicating when the DBE is expected to perform the work.
  - (4) A list of (1) equipment owned by the DBE to be used on the Project, and (2) equipment to be leased by the DBE for use on the Project.
  - (5) A list of: (1) all projects (public and private) which the DBE is currently performing; (2) all projects (public and private) to which the DBE is committed; and (3) all projects (public and private) to which the DBE intends to make a commitment. For each Contract, list the contracting organization, the name and telephone number of a contact person for the contracting organization, the dollar value of the work, a description of the work, and the DBE's work schedule for each project.

- f.** If, pursuant to the Subcontractor approval process, MassDOT finds that a DBE Subcontractor does not have sufficient experience or resources to perform, manage and supervise work of the kind proposed in accordance with the requirements of 49 CFR Part 26, approval of the DBE Subcontractor may be denied. In the event of such denial, the Prime Contractor shall proceed in accordance with the requirements paragraphs **8.g** and **8.k** of this section.
- g.** If, for reasons beyond its control, the Prime Contractor cannot comply with its DBE participation commitment in accordance with the Schedule of Participation or OEPP submitted under Section 7, the Prime Contractor shall submit to MassDOT the reasons for its inability to comply with its obligations and shall submit, and request approval for, a revised Schedule of Participation or OEPP. If approved by MassDOT, the revised Schedule shall govern the Prime Contractor's performance in meeting its obligations under these Special Provisions.
- h.** A Prime Contractor's compliance with the participation goal in Section 2 shall be determined by reference to the established percentage of the total contract price, provided, however, that no decrease in the dollar amount of a bidder's commitment to any DBE shall be allowed without the approval of MassDOT.
- i.** If the Contract amount is increased, the Prime Contractor may be required to submit a revised Schedule of Participation in accordance with paragraphs **8.g** and **8.k** of this section.
- j.** In the event of the decertification of a DBE scheduled to participate on the Contract for credit toward the participation goal, but not under subcontract, the Contractor shall proceed in accordance with paragraphs **8.g** and **8.k** of this section.
- k.** The Prime Contractor shall notify MassDOT immediately of any facts that come to its attention indicating that it may or will be unable to comply with any aspect of its DBE obligation under this Contract.
- l.** Any notice required by these Special Provisions shall be given in writing to: (1) the Resident Engineer; (2) the District designated Compliance Officer; and (3) the DBE Liaison Officer, MassDOT Office of Civil Rights, 10 Park Plaza, – 3rd Floor - West, Boston, MA, 02116 and cc'd to the Deputy Chief of External Programs.
- m.** The Prime Contractor and its Subcontractors shall comply with MassDOT's Electronic Reporting System Requirements (MassDOT Document 00821) and submit all information required by MassDOT related to the DBE Special Provisions through the Equitable Business Opportunity Solution ("EBO"). MassDOT reserves the right to request reports in the format it deems necessary anytime during the performance of the Contract.
- n. Termination of DBE by Prime Contractor**

  - (1) A Prime Contractor shall not terminate a DBE Subcontractor or an approved substitute DBE firm without the prior written consent of MassDOT. This includes, but is not limited to, instances in which a Prime 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.

- (2) MassDOT may provide such written consent only if MassDOT agrees, for reasons stated in its concurrence document, that the Prime Contractor has good cause to terminate the DBE firm.
- (3) For purposes of this paragraph, good cause includes the following circumstances:
  - (i) The DBE Subcontractor fails or refuses to execute a written contract;
  - (ii) The DBE Subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Good cause, however, 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 Prime Contractor;
  - (iii) The DBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
  - (iv) The DBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
  - (v) The DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable State law;
  - (vi) (vii) MassDOT has determined that the listed DBE Subcontractor is not a responsible contractor;
  - (vii) The listed DBE Subcontractor voluntarily withdraws from the Project and provides written notice of its withdrawal;
  - (viii) The listed DBE is ineligible to receive DBE credit for the type of work required;
  - (ix) A DBE owner dies or becomes disabled with the result that the listed DBE Contractor is unable to complete its work on the Contract;
  - (x) Other documented good cause that MassDOT determines compels the termination of the DBE Subcontractor. Good cause, however, does not exist if the Prime Contractor seeks to terminate a DBE it relied upon to obtain the Contract so that the Prime Contractor can self-perform the DBE work or substitute another DBE or non-DBE Contractor after Contract Award.
- (4) Before transmitting to MassDOT a request to terminate and/or substitute a DBE Subcontractor, the Prime Contractor must give notice in writing to the DBE Subcontractor, with a copy to MassDOT, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The Prime Contractor must give the DBE five (5) business days to respond to the Prime Contractor's notice. The DBE must advise MassDOT and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why MassDOT should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), MassDOT may provide a response period shorter than five (5) business days.
- (6) In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms.

**o. Prompt Payment.**

Contractors are required to promptly pay Subcontractors under this Prime Contract within ten (10) business days from the receipt of each payment the Prime Contractor receives from MassDOT. Failure to comply with this requirement may result in the withholding of payment to the Prime Contractor until such time as all payments due under this provision have been received by the Subcontractor(s) and/or referral to the Prequalification Committee for action which may affect the Contractor's prequalification status.

**9. SANCTIONS**

If the Prime Contractor does not comply with the terms of these Special Provisions and cannot demonstrate to the satisfaction of MassDOT that good faith efforts were made to achieve such compliance, MassDOT may, in addition to any other remedy provided for in the Contract, and notwithstanding any other provision in the Contract:

- a.** Retain, in connection with final acceptance and final payment processing, an amount determined by multiplying the total contract amount by the percentage in Section 2, less the amount paid to approved DBE(s) for work performed under the Contract in accordance with the provisions of Section 8.
- b.** Suspend, terminate or cancel this Contract, in whole or in part, and call upon the Prime Contractor's surety to perform all terms and conditions in the Contract.
- c.** In accordance with 720 CMR 5.05(1)(f), modify or revoke the Prime Contractor's Prequalification status or recommend that the Prime Contractor not receive award of a pending Contract. The Prime Contractor may appeal the determination of the Prequalification Committee in accordance with the provisions of 720 CMR 5.06.
- d.** Initiate debarment proceedings pursuant to M.G.L. c. 29 §29F and, as applicable, 2 CFR Parts 180, 215 and 1,200.
- e.** Refer the matter to the Massachusetts Attorney General for review and prosecution, if appropriate, of any false claim or pursuant to M.G.L. c. 12, §§ 5A to 5O (the Massachusetts False Claim Act).
- f.** Refer the matter to the U.S. DOT's Office of the Inspector General or other agencies for prosecution under Title 18, U.S.C. § 1001, 49 CFR Parts 29 and 31, and other applicable laws and regulations.

**10. FURTHER INFORMATION; ENFORCEMENT, COOPERATION AND CONFIDENTIALITY.**

- a.** Any proposed DBE, bidder, or Contractor shall provide such information as is necessary in the judgment of MassDOT to ascertain its compliance with the terms of this Special Provision. Further, pursuant to 49 CFR, Part 26.107:

ADDENDUM NO. 8, December 6, 2024

- (1) If you are a firm that does not meet the eligibility criteria of 49 CFR, Parts 26.61 to 26.73 (“subpart D”), that attempts to participate in a DOT- assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, MassDOT or FHWA may initiate suspension or debarment proceedings against you under 49 CFR Part 29.
  - (2) If you are a firm that, in order to meet DBE Contract participation goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D, FHWA may initiate suspension or debarment proceedings against you under 49 CFR Part 29.
  - (3) In a suspension or debarment proceeding brought either under subparagraph a.(1) or b.(2) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude FHWA from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE participation goals, should be suspended or debarred.
  - (4) FHWA may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE Program whose conduct is subject to such action under 49 CFR Part 31.
  - (5) FHWA may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.
- b. Pursuant to 49 CFR Part 26.109, the rules governing information, confidentiality, cooperation, and intimidation or retaliation are as follows:
- (1) Availability of records.

    - (i) In responding to requests for information concerning any aspect of the DBE Program, FHWA complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). FHWA may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.
    - (ii) MassDOT shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal and Massachusetts General Law (M.G.L. c. 66, § 10, M.G.L. c. 4, §7 (26), 950 CMR 32.00).
  - (2) Confidentiality of information on complainants. Notwithstanding the provisions of subparagraph b.(1) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

- (3) Cooperation. All participants in FHWA's DBE Program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and Contractors using DBE firms to meet Contract participation goals) are required to cooperate fully and promptly with U.S. DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a Contractor which uses DBE firms to meet participation goals, findings of non-responsibility for future Contracts and/or suspension and debarment).
- (4) Intimidation and retaliation. No recipient, Contractor, or any other participant in the program, may intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If any recipient or contractor violates this prohibition, that entity is in noncompliance with this 49 CFR Part 26.

## 11. LIST OF ADDITIONAL DOCUMENTS.

- a. The following documents shall be completed and signed by the bidder and designated DBEs in accordance with Section 7 - Award Documentation and Procedures. These documents must be returned by the bidder to MassDOT's Bid Document Distribution Center:
- Design Schedule of DBE Participation (Document B00853A)
  - Construction Schedule of DBE Participation (Document B00853B) (Optional)
  - Letter of Intent (Document B00854)
  - Open Ended Construction Schedule of DBE Participation (Document B00853C)
  - Schedule of Proposed DBE Contract Execution (Document B00860DB)
  - DBE Joint Check Arrangement Approval Form (Document B00855), if Contractor and DBE plan, or if DBE is required to use a Joint Check
  - Any other DBE documentation as specified in the DBE section of the RFP Volume I
- b. The following document shall be signed and returned by Contractor and Subcontractors/DBEs to the MassDOT District Office overseeing the Project, as applicable:
- Contractor/Subcontractor Certification Form (Document 00859DB) (a checklist of other documents to be included with every subcontract (DBEs and non-DBEs alike)).
- c. The following document shall be provided to MassDOT's Office of Civil Rights and Prequalification Office at least fourteen (14) business days before the bid opening date, if applicable:
- Affidavit of DBE/Non-DBE Joint Venture (Document B00856)

- d.** The following document shall be provided to MassDOT's District Office of Civil Rights within 30 calendar days after the work of the DBE is completed, or no later than 30 calendar days after the work of the DBE is on a completed and processed CQE. This document shall be completed and submitted by the Prime Contractor:
- Certificate of Completion by a Minority/Women or Disadvantaged Business Enterprise (M/W/DBE) (Form No. CSD-100)

\*\*\* END OF DOCUMENT \*\*\*

DOCUMENT B00853A

(November 22, 2024 – for all Design-Build Federally Aided Projects)

DESIGN SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)

PRIME BIDDER: \_\_\_\_\_

DATE OF BID OPENING: \_\_\_\_\_ PROJECT NO: 605311

FEDERAL AID PROJECT NO: HIP(NGB)-003S(786)

PROJECT LOCATION: MARION-WAREHAM

Name, Address, and Phone Number(s) of DBE	Name of Design Activity	(a)† DBE Designer Activity Amount <i>Design Work</i>	(b) Total amount eligible for credit under rules in Section 6 of Document 00719DB - DBE Special Provisions
Total Design Amount	TOTALS:	\$	\$
\$	DBE Percentage of Total Design Bid:	%	%

Attach additional sheets as necessary.

Is MassDOT Document B00855 (Joint Check Approval) being submitted for any of the above?  Yes  No

Not Known at This Time

Will any of the Designers listed above be using a third party (i.e. manufacturer) to deliver materials or perform any portion of work by a third party?  Yes  No

**CERTIFICATION:** I HEREBY DECLARE, TO THE BEST OF MY KNOWLEDGE, THAT I HAVE READ THE SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES DESIGN-BUILD - DOCUMENT 00719DB. BOTH THIS SCHEDULE AND THE RELEVANT AND ACCOMPANYING LETTER(S) OF INTENT ARE IN FULL COMPLIANCE WITH THE PROVISIONS OF, AND IN ACCORDANCE WITH, TITLE 49 CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR Part 26).

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

NAME AND TITLE (PRINT): \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_ TEL NO: \_\_\_\_\_

\*\*\* END OF DOCUMENT \*\*\*

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DOCUMENT B00853B

(November 22, 2024 – for all Design-Build Federally Aided Projects)

CONSTRUCTION SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES  
(DBES)

(Page 1 of 2)

PRIME BIDDER: \_\_\_\_\_

DATE OF BID OPENING: \_\_\_\_\_ PROJECT NO.: 605311

FEDERAL AID PROJECT NO. HIP(NGB)-003S(786)X

PROJECT LOCATION: MARION-WAREHAM

PROPOSED LIST OF NAMED DBE PARTICIPANTS

Name, Address, and Phone Number(s) of DBE	Name of Activity	(a)† DBE Contractor Activity Amount <i>Construction Work</i>	(b) DBE Other Business Amount <i>Services, Supplies, Material</i>	(c) Total amount eligible for credit under rules in Section 6 of Document 00719DB - DBE Special Provisions
Total Construction Bid Amount (Total Bid Amount minus the Design Cost)	TOTALS:	\$	\$	\$
\$		%	%	%
	DBE Percentage of Total Construction Bid*:			

†Column (a) must be at least one-half of the DBE participation goal. Attach additional sheets as necessary.

\*Totals from Documents 00853B and 00853C shall equal the total participation goal percentage specified in Document 00719DB.

Is MassDOT Document B00855 (Joint Check Approval) being submitted for any of the above?  Yes  No

Not Known at This Time

Will any of the contractors listed above be using a third party (i.e. manufacturer) to deliver materials or perform any portion of work by a third party?  Yes  No

CONSTRUCTION SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES  
(DBES)  
(Page 2 of 2)

**CERTIFICATION:** I HEREBY DECLARE, TO THE BEST OF MY KNOWLEDGE, THAT I HAVE READ THE SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES - DOCUMENT 00719DB. BOTH THIS SCHEDULE AND THE RELEVANT AND ACCOMPANYING LETTER(S) OF INTENT ARE IN FULL COMPLIANCE WITH THE PROVISIONS OF, AND IN ACCORDANCE WITH, TITLE 49 CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR Part 26).

SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

NAME AND TITLE (*PRINT*): \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_ TEL NO.: \_\_\_\_\_

*Rev'd 11/22/24*

\*\*\* END OF DOCUMENT \*\*\*

DOCUMENT B00853C  
 (For Design-Build Federally Aided Projects only)

OPEN ENDED SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)  
 – CONSTRUCTION  
 (Page 1 of 2)

PRIME BIDDER: \_\_\_\_\_

DATE OF BID OPENING: \_\_\_\_\_ PROJECT NO.: 605311

FEDERAL AID PROJECT NO. HIP(NGB)-003S(786)X

PROJECT LOCATION: MARION-WAREHAM

OPEN ENDED PERFORMANCE PLAN PROPOSED WORK FOR DBEs  
 (EXCLUDING DBE COMMITMENTS LISTED IN B00853A and B00853B)

Brief Description of Activities	NAICS Code	DBE Activity Amount	
Total Construction Bid Amount  \$	TOTALS:		\$
	OEPP DBE Percentage of Total Construction Bid		%

Total Construction Bid Amount (Excluding Design)  \$	Total DBE Construction Commitments (B00853B + B00853C)  \$	Construction DBE Percentage of Total Construction Bid*  %
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\*Totals from B00853B and B00853C shall equal the total participation goal percentage specified in Document 00719DB.

OPEN ENDED SCHEDULE OF PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES (DBES)  
– CONSTRUCTION  
(Page 1 of 2)

**CERTIFICATION:** I HEREBY DECLARE, TO THE BEST OF MY KNOWLEDGE, THAT I HAVE READ THE SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES DESIGN-BUILD – DOCUMENT 00719DB. THIS SCHEDULE IS IN FULL COMPLIANCE WITH THE PROVISIONS OF, AND IN ACCORDANCE WITH, TITLE 49 CODE OF FEDERAL REGULATIONS, PART 26 (49 CFR Part 26).

SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

NAME AND TITLE (*PRINT*): \_\_\_\_\_

EMAIL ADDRESS: \_\_\_\_\_ TEL NO.: \_

\*\*\* END OF DOCUMENT \*\*\*

*Rev'd 11/22/24*

DOCUMENT B00860DB  
 (November 22, 2024 – for Design-Build Federally Aided Projects Only)

OPEN ENDED PERFORMANCE PLAN (OEPP)  
 SCHEDULE OF PROPOSED DBE CONTRACT EXECUTION

PRIME BIDDER: \_\_\_\_\_

DATE OF BID OPENING: \_\_\_\_\_ PROJECT NO.: 605311

FEDERAL AID PROJECT NO. HIP(NGB)-003S(786)X

PROJECT LOCATION: MARION-WAREHAM

Time Interval (Beginning at Notice to Proceed)	Work Category	Anticipated Utilization* (% of Contract Value to nearest 0.1%)
0 – 6 months		
7 – 12 months		
13 – 18 months		
19 – 24 months		
25 – 30 months		
31 – 36 months		
37 – 42 months		
43 – 48 months		
49 – 54 months		
55 – 60 months		
61 – 66 months		
67 – 72 months		
Etc.		

*This table shall represent the time interval in when the Proposer commits to submit to MassDOT, a signed subcontractor agreement with a DBE firm for this category of work.*

*\*Total Utilization should agree with the Schedule of Participation (B00853C) and should reflect the fact that DBE contracts shall be executed by the time design is complete.*

Rev'd 11/22/24

\*\*\* END OF DOCUMENT \*\*\*

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⑧ ADDENDUM NO. 8, December 6, 2024

① ADDENDUM NO. 1, September 30, 2024

**APPENDIX A: TERMS AND DEFINITIONS****APPENDIX B: WAGE RATES FOR STATE AND FEDERAL PROJECTS****APPENDIX C: PROJECT REFERENCE DOCUMENTS**

## C.01 BASE TECHNICAL CONCEPT

- 605311\_M-05-001=W-06-013 - CAD.zip
- 605311\_W-06-016 - CAD.zip
- 605311 Highway CAD.zip
- 605311\_BTC\_HIGHWAY PLANS
- 605311\_BTC\_BRIDGE PLANS M-05-001=W-06-013
- 605311 BTC BRIDGE PLANS W-06-016

## C.02 VALUE ENGINEERING STUDY - [NOT APPLICABLE]

## C.03 CIVIL

- 605311 Accepted Right of Way Plans
- 605311 Functional Design Report
- 605311 Design Justification Workbook
- 605311 Stormwater Management Report
- 605311-25% Water Quality Data Form (WQDF)
- A00815-Maint Contracts Work-Zone-Safety-December 2017 (Flip Book)
- A00816 Rumble Strip Details
- Work Zone Speed Limits – MassDOT S.O.P. No. TS-2023-002
- A00808 MassDOT Project Utility Coordination (PUC) Form
- Right of Way Certificate - Marion-Wareham 605311

## C.04 ENVIRONMENTAL

- Approved Environmental Permit Plans
- Wetland Replication-Mitigation Plan\_Jan19\_2024
- Coastal Zone Management Office Consistency
- MassDEP 401 Water Quality Certification (WW BRP 8 and 10)
- MassDEP 401 Water Quality Certification Amendment 09-26-2024
- NEPA Approved Individual CE
- Natural Heritage and Endangered Species Program (NHESP) MESA Conditional No-Take (24-17064)
- NOAA Essential Fish Habitat Conservation Recommendations
- NOAA Essential Fish Habitat MassDOT Acceptance
- NOAA Essential Fish Habitat – Final Coordination Approval
- NOAA Section 7 Coordination Concurrence
- Section 106 Historic and Cultural No Effect Finding and Clearance

⑧ ADDENDUM NO. 8, December 6, 2024

② ADDENDUM NO. 2, October 4, 2024

### 1.4.7 Modification to Environmental Permitting Strategy

This Project shall provide water quality improvements to the maximum extent practicable as defined in the Stormwater Management Standards. Water quality improvements shown in the BTC plans include but are not limited to, deep sump catch basins and outlet protection which are intended to provide treatment to the maximum extent practicable. The stormwater improvements proposed by the Design-Builder shall meet or exceed those shown on the BTC plans. The drainage outlets shown on the BTC plans are intended to keep related construction impacts out of the vegetated wetlands and salt marshes. The Design-Builder should be aware that changes to the design intent of the concepts shown in the BTC Plans may trigger additional permitting/amendments and agency coordination which would be the responsibility of the Design-Builder. Refer to Section 5 of this document for an expanded discussion.

#### Schedule Impact with Seasonal Restrictions

The Design-Builder shall be aware that the following seasonal restrictions shall be adhered to as construction window allowed to avoid potential schedule impacts:

- Hot mix asphalt paving work restriction allows work to occur from April 1<sup>st</sup> to November 15<sup>th</sup>.
- No concrete placement, application of waterproofing sealant, and soil compaction will occur between December 1<sup>st</sup> and March 15<sup>th</sup>.
- The seeding and planting work restriction allows work to occur from April 15<sup>th</sup> to May 31<sup>st</sup> and from August 15<sup>th</sup> to October 31<sup>st</sup>.
- Planting and seeding shall not take place between November 15<sup>th</sup> and April 15<sup>th</sup>, except as allowed by MassDEP in writing.
- Per final NOAA EFH coordination, turbidity producing (in-water E&S control installation) work should be completed outside of the provided time of year restriction (TOY) from March 1 to June 30 of any given year, to minimize adverse effects to NOAA trust resources. If work cannot meet this TOY restriction above, then to minimize adverse effects to fish, controls should not encroach a continuous one-third of the stream width measured from the OHW mark during the TOY restriction.
- Turtle Exclusion Fencing / Erosion and Sedimentation Controls must be installed during the turtles' inactive period to exclude turtles from the project. Generally speaking, the fencing must be installed prior to April 1, and no sooner than November 1 in any given year. NHESP may make additional recommendations or modifications to this timing as part of the Turtle Protection Plan (TPP) approval.
- Additional in-water work TOY's may be identified by NHESP as part of the TPP approval.

### 1.4.8 Noise Mitigation

The Design-Builder's obligations with respect to noise during construction are described in Section 5.6.6, Noise, and in Draft BTC Special Provision Subitem 119.5 – Construction Noise Control, provided in Appendix C.

⑧ ADDENDUM NO. 8, December 6, 2024

② ADDENDUM NO. 2, October 4, 2024

⑧② Evaluation of the potential noise impact and the design and construction of mitigation measures shall be the responsibility of the Design-Builder, incidental to the Work.

Additionally, per NOAA Section 7 approval, proposed piles below the mean high-water line (MHW, see BTC plans) are to be pre-drilled for the first 10-15 feet, then the Design-Builder may implement a vibratory start / impact hammer to the required depth. No vibratory or impact hammer is anticipated for piles above the MHW, they can be drilled to full depths.

"Soft starts" for pile driving are required as follows: If pile driving is occurring during a time of year when ESA-listed species may be present, and the anticipated noise is above the behavioral noise threshold, a "soft start" is required to allow animals an opportunity to leave the project vicinity before sound pressure levels increase. In addition to using a soft start at the beginning of the work day for pile driving, one must also be used at any time following cessation of pile driving for a period of 30 minutes or longer.

For impact pile driving: pile driving will commence with an initial set of three strikes by the hammer at 40% energy, followed by a one minute wait period, then two subsequent three-strike sets at 40% energy, with one-minute waiting periods, before initiating continuous impact driving.

For vibratory pile installation: pile driving will be initiated for 15 seconds at reduced energy followed by a one-minute waiting period. This sequence of 15 seconds of reduced energy driving, one-minute waiting period will be repeated two additional times, followed immediately by pile-driving at full rate and energy.

The Project requires a 5 dB noise attenuation as sound pressure amplitudes above peak sound pressure levels and sound exposure levels can cause onset of physical injury to fish (further described in NOAA Section 7 approval).

⑧ ADDENDUM NO. 8, December 6, 2024

② ADDENDUM NO. 2, October 4, 2024

**4.9.1 Temporary Traffic Control Plan (TTCP)**

- ② The Design-Builder shall maintain at least one travel lane in each direction on US Route 6 with the exception noted in the table below where the Design-Builder is allowed to maintain one lane of alternating traffic during the specified times. The Design-Builder shall maintain access to and from all adjacent roadways and provide, at a minimum, the lane configurations per the BTC plan set. Exceptions to the above roadway capacity requirements within the Project area are listed in the RFP below.

Roadway capacity may be reduced during the hours indicated in the following lane closure tables:

<b>US Route 6</b>			
<b>LANE RESTRICTION HOURS</b>			
	# of lanes open*	Northbound	Southbound
	2	6AM - 10PM	6AM - 10PM
Monday - Thursday	1	10PM – 6AM (Next Day)	10PM – 6AM (Next Day)
	2	6AM - 10PM	6AM - 10PM
Friday	1	10PM – 6AM (Next Day)	10PM – 6AM (Next Day)
	2	6AM - 10PM	6AM - 10PM
Saturday	1	10PM – 6AM (Next Day)	10PM – 6AM (Next Day)
	2	6AM - 10PM	6AM - 10PM
Sunday	1	10PM – 6AM (Next Day)	10PM – 6AM (Next Day)

\* Minimum number of through travel lanes required to remain open to traffic.

⑧

The Design-Builder will be required to submit a temporary traffic control plan (TTCP) and a Real Time Traffic Management (RTTM) system consistent with their final design for MassDOT approval. Preliminary traffic management and construction staging plans are provided in the BTC Plans. The BTC Plans depict the intended staging and lane requirements during construction and are conceptual in nature. The Design-Builder shall provide traffic control plans consistent with project delivery in their proposal, and advance the traffic control plans to final design. Alternative approaches proposed for the construction of the bridges may result in a modified approach to TTCP's (from the BTC) during the different construction phases. The Design-Builder shall respond to District and Boston Traffic review comments in developing the final traffic control plans. These requirements include, at a minimum, the following:

- One (1) through lane in each direction on Route 6 shall be maintained throughout construction with the exception of short-term lane closures during off-peak hours as indicated in the above referenced lane closure table.
- Minimum lane widths of 11 feet are required on Route 6 for two lanes between barriers.
- Consistent with the outreach requirements of Section 1.1.8 and the contingency planning requirements of Section 10.20; the Design-Builder shall provide temporary traffic staging plans to police, fire, and other emergency and highway assistance services in advance of every traffic detour and every change in temporary traffic control setup.

⑧ ADDENDUM NO. 8, December 6, 2024

⑤ ADDENDUM NO. 5, November 1, 2024

**Substantial Completion** is defined as: A walkthrough of the entire contract Work has been performed by the Resident Engineer, a Punch List has been generated and the Work required by the contract, including paper work, has been completed, except for work having a contract price of less than one percent of the adjusted total contract price, including overruns, underruns and all contract amendments. All material submittals have been received by the District Materials Lab.

In addition, Milestone No. 2 – Substantial Completion also includes the following:

- Completion of all environmental mitigation and restoration areas.
- Completion of the roadway resurfacing, final drainage, guardrail barrier, and lane markings.
- Punch List has been developed.
- Fulfillment of the requirements identified in the MassDOT Standard Specifications for Highways and Bridges, 2024 Edition.

⑧ ⑤ The Design-Builder shall achieve Milestone No. 2 within **1,180 Calendar Days** from NTP.

#### **Milestone No. 1 – Contract Completion**

Contractor Field Completion is defined as: All physical contract Work is complete including Punch List. The Contractor has fully de-mobilized from field operations.

In addition, Milestone No. 1 – Contractor Field Completion also includes the following:

- Completion of the Project including Milestone No. 2 and all Punch List Work.
- Acceptance of As-Built Drawings and Rating Reports.
- Fulfillment of the requirements identified in the MassDOT Standard Specifications for Highways and Bridges, 2024 Edition.

⑧ ⑤ The Design-Builder shall achieve Milestone No. 1 within **1,264 Calendar Days** from NTP.