

## EXHIBIT 23

### DBE & SWAM MATTERS

#### Part 1. DBE Matters

##### 1.1 General

.1 The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small business through the DBE program, where applicable.

.2 Design-Builder (and each of its Subcontractors) shall not discriminate on the basis of race, color, national origin or sex in the performance of the Agreement. Design-Builder (and each of its Subcontractors) shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation-assisted contract. Failure by Design-Builder (and each of its Subcontractors) to carry out these requirements is a material breach of the Agreement, which may result in the termination of the Agreement or such other remedy as set forth in Section 1.5 of this **Exhibit 23**.

##### 1.2 Design-Builder's Work

.1 During the performance of the Work, in an effort to comply with 49 CFR Part 26, Department has established a goal of twelve percent (12%) for DBE participation, such percentage relating to the DBE/SWaM Contract Value.

.2 Design-Builder agrees to manage the foregoing goals as follows:

(a) Design-Builder will submit an updated DBE/SWaM Plan on each anniversary of the issuance of NTP prior to the Final Completion Date that defines Design-Builder's approach to meeting the DBE goals;

(b) Design-Builder will have dedicated resources to the DBE inclusion program to ensure compliance with 49 CFR Part 26, the DBE/SWaM Plan, nondiscrimination provisions, technical assistance activities, communication of subcontracting opportunities and to generate reports specific to DBE utilization;

(c) Design-Builder will be responsible for either achieving or making Good Faith Efforts to achieve the DBE goals by providing maximum contracting opportunities for DBE businesses;

(d) Design-Builder will provide to the Department each calendar quarter documentation of all executed Subcontracts and payments to DBE businesses;

(e) Design-Builder will have the opportunity to establish DBE-only statement of work packages; and

(f) Design-Builder will provide Good Faith Efforts documentation using Form C-49 and other supplemental information as appropriate for Subcontracts that do not include DBE participation. Design-Builder agrees that if Department accepts the Good Faith Efforts documentation on a particular bid item group, Design-Builder will make reasonable efforts to accomplish the overall DBE goal using other bid item groups.

**.3** During the performance of the Work, the parties will work cooperatively to accomplish the applicable DBE objectives. Department will provide reasonable assistance to Design-Builder, including by:

(a) jointly conducting outreach meetings for DBE firms;

(b) identifying to Design-Builder firms that are eligible to bid on specific bid item groups; and

(c) providing access to technical and managerial assistance to eligible DBE firms, including in part, through the Department's Civil Rights Division and the Business and Workforce Development Center (subject to the availability of funds).

**.4** Design-Builder acknowledges and agrees that Department's assistance and cooperation will not eliminate or reduce Design-Builder's responsibility to achieve the DBE goals or demonstrate Good Faith Efforts in pursuit of the DBE goal. Design-Builder shall utilize a variety of means and methods and creative strategies to meet the DBE goal. The Design-Builder shall employ such strategies for all phases of the Project. Design-Builder is expected to meet the DBE goals or demonstrate that Good Faith Efforts have been made. Design-Builder shall submit to Department quarterly reports of Good Faith Efforts documentation and payments made to DBE firms on Form C-63.

### **1.3 DBE Reporting and Assessment**

**.1** Design-Builder will report to Department quarterly, within fifteen (15) days after each calendar quarter ends, Design-Builder's efforts to (a) satisfy the DBE goals set forth in this Section 1.2.1 of this **Exhibit 23** or (b) demonstrate Good Faith Efforts to accomplish the DBE goals set forth in this Section 1 of this **Exhibit 23**.

**.2** Department will assess, confirm and communicate to Design-Builder within thirty (30) days after receiving each quarterly report whether Design-Builder has (a) satisfied the DBE goals, (b) demonstrated Good Faith Efforts or (c) failed to satisfy the requirements of clauses (a) and (b) of this Section 1.3.2 of this **Exhibit 23**.

### **1.4 Failure to Demonstrate Good Faith Efforts**

.1 If Department notifies Design-Builder pursuant to Section 1.4 of this **Exhibit 23** that Design-Builder has failed to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work for a quarterly period, Design-Builder will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (a) or (b) of Section 1.3.2 with respect to such DBE goals.

.2 If Design-Builder has failed to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work for two consecutive quarters based on the determination by Department pursuant to Section 1.3 of this **Exhibit 23**, Design-Builder will prepare and submit, at Design-Builder's sole cost and expense, a DBE performance improvement plan ("DBE Performance Improvement Plan") for Department's review and approval. The DBE Performance Improvement Plan will describe the specific actions and measures that Design-Builder will undertake to improve its performance with respect to the requirements of clauses (a) and (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work. Design-Builder will submit the DBE Performance Improvement Plan to Department within fifteen (15) days after receiving notice from Department pursuant to Section 1.3 of this **Exhibit 23** that Design-Builder has failed to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23**. Design-Builder shall pay Department for Department's costs in reviewing, approving and monitoring Design-Builder's compliance with the DBE Performance Improvement Plan until Design-Builder satisfies the requirements of either clause (a) or (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work.

.3 If Design-Builder has failed to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work for three (3) consecutive quarters based on the determination by Department pursuant to Section 1.3.2 of this **Exhibit 23**, Department may debar or disqualify the Key Members from participating in state procurements through Department until the earlier to occur of (x) Design-Builder satisfies the requirements of either clause (a) or clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work or (y) twenty-four (24) months after the effective date of the debarment. Only the Commissioner of Highways may waive the provisions of this Section 1.4 of this **Exhibit 23**.

.4 If Department determines at any time that Design-Builder has satisfied the requirements of either clause (a) or clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work performed to date with respect to the applicable calendar quarter, then any prior determinations by Department of Design-Builder's failure to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to such DBE goals will be disregarded, Design-Builder will be deemed to be in compliance with this Section 1.4 of this **Exhibit 23**, and any future determinations of a failure to satisfy the requirements of clause (a) of Section 1.3.2 of this **Exhibit 23** and a failure to satisfy the requirements of clause (b) of Section 1.3.2 of this **Exhibit 23** with respect to such DBE goals will be pursuant to the provisions set forth in Section 1.4.1 of this **Exhibit 23**.

.5 Any decision or action taken by Department pursuant to Section 1.4 of **Exhibit 23** is subject to the dispute resolution procedures set forth in Section 10.2 of the General Conditions of Contract.

**1.5 Trainee and Apprenticeship Participation Program.** Department will require trainee and apprenticeship participation for the Project. The on-the-job trainee goal for the Project is eighty (80) individuals. This program will be conducted in accordance with Attachment 7 to **Exhibit 26**, Section 518 of the *Road and Bridge Specifications* (except that all compensation for such training shall be included in the Contract Price, and Department will not provide additional payment for this training), and the VTCA-VDOT *On the Job Training (OJT) Manual for Standard Pre-Approved Job Classifications*.

## **Part 2. SWaM Matters**

### **2.1 General**

.1 The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the SWaM program, where applicable.

.2 Design-Builder shall not permit its Subcontractors to discriminate on the basis of race, color, national origin, or sex in the performance of the Agreement. Design-Builder shall carry out applicable requirements of Executive Order 33 (2006), in the award and administration of the Agreement and the award and administration of Subcontracts pursuant to the Agreement.

.3 Failure by Design-Builder to carry out the requirements in this Section 2 of this **Exhibit 23** relating to SWaM participation will subject Design-Builder to only the remedies set forth in Section 2.4 of this **Exhibit 23** and shall not result in a termination of the Agreement. If debarment occurs as a result of the Department's exercise of such remedies, such debarment shall not result in a termination of the Agreement.

### **2.2 Design-Builder's Work**

.1 During performance of the Work, in an effort to support Executive Order 33 (2006), Department has established a goal of twenty percent (20%) for SWaM participation, such percentage relating to the DBE/SWaM Contract Value.

.2 Design-Builder agrees to manage the foregoing goals as follows:

(a) Design-Builder will submit an updated DBE/SWaM Plan on each anniversary of the issuance of NTP prior to the Final Completion Date that defines Design-Builder's approach to meeting the SWaM goals;

(b) Design-Builder will have dedicated resources to the SWaM inclusion program to ensure compliance with Executive Order 33 (2006), the DBE/SWaM Plan,

nondiscrimination provisions, technical assistance activities, communication of subcontracting opportunities and to generate reports specific to SWaM utilization;

(c) Design-Builder will be responsible for either achieving or making Good Faith Efforts to achieve the SWaM goals by providing maximum contracting opportunities for SWaM businesses;

(d) Design-Builder will provide to the Department each calendar quarter documentation of all executed Subcontracts and payments to SWaM businesses;

(e) Design-Builder will have the opportunity to establish SWaM-only statement of work packages; and

(f) Design-Builder will provide Good Faith Efforts documentation using Form C-49 and other supplemental information as appropriate for Subcontracts that do not include SWaM participation. Design-Builder agrees that if Department accepts the Good Faith Efforts documentation on a particular bid item group, Design-Builder will make reasonable efforts to accomplish the overall SWaM goal using other bid item groups.

**.3** During the performance of the Work, the parties will work cooperatively to accomplish the applicable SWaM objectives. Department will provide reasonable assistance to Design-Builder, including by:

(a) jointly conducting outreach meetings for SWaM firms;

(b) identifying to Design-Builder firms that are eligible to bid on specific bid item groups; and

(c) providing access to technical and managerial assistance to eligible SWaM firms, including in part, through the Department's Civil Rights Division and the Business and Workforce Development Center (subject to the availability of funds).

**.4** Design-Builder acknowledges and agrees that Department's assistance and cooperation will not eliminate or reduce Design-Builder's responsibility to achieve the SWaM goals or demonstrate Good Faith Efforts in pursuit of the SWaM goal. Design-Builder shall utilize a variety of means and methods and creative strategies to meet the SWaM goal. The Design-Builder shall employ such strategies for all phases of the Project. Design-Builder is expected to meet the SWaM goals or demonstrate that a Good Faith Effort has been made. Design-Builder shall submit to Department quarterly reports of Good Faith Efforts documentation and payments made to SWaM firms on Form C-63.

## **2.3 SWaM Reporting and Assessment**

**.1** Design-Builder will report to Department quarterly, within fifteen (15) days after each calendar quarter ends, Design-Builder's efforts to (a) satisfy the SWaM goals set forth in

this Section 2.14 of the General Conditions of Contract or (b) demonstrate Good Faith Efforts to accomplish the SWaM goals set forth in this Section 2.2.1 of this **Exhibit 23**.

.2 Department will assess, confirm and communicate to Design-Builder within thirty (30) days after receiving each quarterly report whether Design-Builder has (a) satisfied the SWaM goals, (b) demonstrated Good Faith Efforts or (c) failed to satisfy the requirements of clauses (a) and (b) of this Section 2.3.2 of **Exhibit 23**.

## 2.4 Failure to Demonstrate Good Faith Efforts

.1 If Department notifies Design-Builder pursuant to Section 2.4.3 of this **Exhibit 23** that Design-Builder has failed to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to the SWaM goals for the Work for a quarterly period, Design-Builder will have until the end of the next consecutive quarter to demonstrate that it has satisfied the requirements of either clause (a) or (b) of Section 2.3.2 of this **Exhibit 23** with respect to such SWaM goals.

.2 If Design-Builder has failed to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to the SWaM goals for the Work for two consecutive quarters based on the determination by Department pursuant to Section 2.4.3 of this **Exhibit 23**, Design-Builder will prepare and submit, at Design-Builder's sole cost and expense, a SWaM performance improvement plan ("**SWaM Performance Improvement Plan**") for Department's review and approval. The SWaM Performance Improvement Plan will describe the specific actions and measures that Design-Builder will undertake to improve its performance with respect to the requirements of clauses (a) and (b) of Section 2.3.2 of this **Exhibit 23** with respect to the SWaM goals for the Work. Design-Builder will submit the SWaM Performance Improvement Plan to Department within fifteen (15) days after receiving notice from Department pursuant to Section 2.4.3 of this **Exhibit 23** that Design-Builder has failed to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23**. Design-Builder shall pay Department for Department's costs in reviewing. Approving and monitoring Design-Builder's compliance with the SWaM Performance Improvement Plan until Design-Builder satisfies the requirements of either clause (a) or (b) of Section 2.3.2 of this **Exhibit 23** with respect to the SWaM goals for the Work.

.3 If Design-Builder has failed to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to the SWaM goals for the Work for three (3) consecutive quarters based on the determination by Department pursuant to Section 2.3 of this **Exhibit 23**, Department may debar or disqualify the Key Members from participating in state procurements through Department until the earlier to occur of (x) Design-Builder satisfies the requirements of either clause (a) or clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work or (y) twenty-four (24) months after the effective date of the debarment. Only the Commissioner of Highways may waive the provisions of this Section 2.14 of this **Exhibit 23**.

.4 If Department determines at any time that Design-Builder has satisfied the requirements or either clause (a) or clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to the DBE goals for the Work performed to date with respect to the applicable calendar quarter, then any prior determinations by Department of Design-Builder's failure to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and has failed to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to such DBE goals will be disregarded, Design-Builder will be deemed to be in compliance with this Section 2.4 of this **Exhibit 23**, and any future determinations of a failure to satisfy the requirements of clause (a) of Section 2.3.2 of this **Exhibit 23** and a failure to satisfy the requirements of clause (b) of Section 2.3.2 of this **Exhibit 23** with respect to such DBE goals will be pursuant to the provisions set forth in Section 2.4.1 of this **Exhibit 23**.

.5 Any decision or action taken by Department pursuant to Section 2.4.4 of this **Exhibit 23** is subject to the dispute resolution procedures set forth in Section 10.2 of the General Conditions of Contract.

---

**ATTACHMENT 1**

**EXCLUSIONS TO DBE/SWAM CONTRACT VALUE**

1. Design-Builder fee / profit
2. Contingency
  - (a) Risk-based contingency
  - (b) Design development allowance
3. Taxes / fees
4. Design-Builder staff
  - (a) Management / craft supervision
  - (b) Engineering personnel
  - (c) Office personnel
  - (d) Safety personnel
5. Insurance / bond
6. Equipment / vehicles / small tools
7. Equipment maintenance / vehicle maintenance
8. Relocation / living expenses
9. Training and safety supplies
10. Field office facilities and equipment