# NOTICE REGARDING EXHIBIT H PARTICPATION, UTILIZATION PLAN(SOITEAM) AND LETTER OF INTENT FOR PROFESSIONAL SERVICES

**Illinois State Toll Highway Authority**

**SPECIAL PROVISION**

**FOR**

**DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION**

## 1. POLICY STATEMENT

It is the policy of the Illinois State Toll Highway Authority ("ISTHA" or "Tollway") that qualified and *bona fide* Disadvantaged Business Enterprises (DBEs), as that term is defined herein, have maximum feasible opportunities to participate fully in the performance of all contracts funded and administered by the Tollway. The Tollway seeks to ensure non-discrimination in the award and administration of its contracts and associated subcontracts and that it is not a passive participant in a discriminatory marketplace; to create a level playing field on which DBEs can compete fairly for its contracts; to ensure that its Special Provision is narrowly tailored in accordance with applicable law; to ensure that only firms that meet the eligibility standards are permitted to participate as DBEs; and to help to remove barriers to participation of DBEs in Tollway contracts and associated subcontracts.

Consistent with this policy, it is the responsibility of all Vendors for general contracting work and a specific condition of all Tollway contracts to which they are parties to ensure full and fair opportunities for DBEs to compete in contracts funded and administered by the Tollway and to fully comply with this Special Provision.

## 2. DEFINITIONS

For the purposes of this Special Provision, the following terms shall have the following meanings:

Affiliate of a person or entity means a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person or entity. In determining Affiliation, the Tollway shall consider all appropriate factors, including common ownership, common management, and contractual relationships.

Broker means a person or entity that fills orders by purchasing or receiving supplies from a thirdparty supplier rather than out of its own existing inventory and provides no substantial service other than acting as a conduit between his or her supplier and his or her customer.

Commercially Useful Function means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, or fulfilling responsibilities as a Joint Venture partner.

Contingency Work is the anticipated work within the scope of the project which is included in the project to cover the work of such an uncertain nature that the location or quantity could not be identified prior to awarding the contract.

Core Work is the anticipated work within the scope of the project which is included in the project to cover the work of such a nature that the location and estimated quantity could be identified prior to awarding the contract.

Disadvantaged Business Enterprise (“DBE") means a business currently certified by the Illinois

Unified Certification Program (“ILUCP”) pursuant to 49 C.F.R. Part 26, or a business currently certified by the City of Chicago, Illinois or the County of Cook, Illinois, as a Minority or Women Owned Business (“M/WBE") pursuant to its M/WBE program for construction contracts, Art. IV, § 2-92-650, et seq, as amended, or a business currently certified by the U.S. Small Business Administration (SBA) pursuant to the Small Business Act as an SBA 8(a) business, owned and operated by a socially and economically disadvantaged person. A DBE is considered to have current certification if the firm is listed in the directory database of the pertinent certifying agency.

DBE Joint Venture means an association of two or more persons, or any combination of types of business enterprises and persons numbering two or more, proposing to perform as a single for profit business enterprise, in which each Joint Venture partner contributes property, capital, efforts, skill and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the project and whose share in the capital contribution, control, management, risks, and profits of the Joint Venture are equal to its ownership interest. Joint Ventures must have an agreement in writing specifying the terms and conditions of the relationships between the partners and their relationship, risks and responsibility under the contract.

DBE Utilization Plan means the list of currently certified DBEs that the Vendor commits will be utilized, including its own participation as a DBE, if applicable, in the scopes of the work and the dollar values or the percentages of the work to be performed pursuant to this solicitation and in conformance with this Special Provision.

Good Faith Efforts means actions undertaken by a Vendor to achieve a DBE contract goal, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the contract goal.

Mobilization means preparatory work and operations necessary for the movement of personnel, equipment and incidentals to the project site for the establishment of offices, buildings and other facilities necessary for work on the project and for all other work operations which must be performed, or costs incurred when beginning work on the project.

Regular Dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. 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 or lease of the products in question. A firm 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 if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, manufacturer representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

## 3. VENDOR ASSURANCE

The Vendor will assure that each of its employees and its Subconsultants' employees associated with the contract shall not discriminate on the basis of any protected category identified by law in the performance of this contract. Failure by the Vendor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Tollway deems appropriate.

## 4. DBE CONTRACT GOAL TO BE ACHIEVED BY THE VENDOR

This contract includes a specific DBE utilization goal of **___%** of the contract. The goal reflects the estimated availability of DBEs to perform the scopes of work of this contract, including as a prime Vendor. Consequently, in addition to the other award criteria established for this contract, ISTHA will award this contract to a Vendor who either meets this goal or who demonstrates its good faith efforts to do so. The participation of DBEs will be calculated on the amount identified in the proposal documents. **The Vendor's DBE commitment will be assessed for any supplement at the time such requests are made.**

## 5. DBE, M/WBE and SBA 8(a) LOCATOR REFERENCES

Vendors should consult the Illinois Unified Certification Program ("ILUCP") DBE Directory as a reference source for DBEs and the City of Chicago, the County of Cook M/WBE directories as reference sources for M/WBEs in construction certified by the City of Chicago or the County of Cook, or the Small Business Administration SBA 8(a) directory for SBA 8(a)s certified by the Small Business Administration. Only firms certified by the IL-UCP, the City of Chicago, the County of Cook, or the Small Business Administration **at the time of proposal submitted** are eligible to be considered for contract award to either meet the contract goal or establish the Vendor's good faith efforts to do so. These directories are to be used as an informational source only. Certification does not mean that a firm is in any way prequalified to provide the products and/or services in its certification specialty. "Certification" means that the ILUCP, the City of Chicago, the County of Cook, or the Small Business Administration has determined, on the basis of information provided and the representations therein, that a business is a *bona fide* DBE. The ILUCP, the City of Chicago, the County of Cook or the Small Business Administration does not, as a result of listing, make any representation concerning the ability of any listed firm to perform work in the specialty listed. The Tollway does not, through its use of and referral to ILUCP DBE, the City of Chicago, the County of Cook MBE/WBE, and the Small Business Administration SBA 8(a) lists, make any representation concerning the ability of any listed firm to perform work in its certification specialty. The Vendor must conduct its own due diligence regarding the capabilities of certified firms to perform the work of the contract.

## 6. PROFESSIONAL SERVICES BULLETIN PROCEDURES

Compliance with the Professional Services Bulletin procedures of this Special Provision is required as provided in this Special Provision prior to the award of the contract.

### 6.1 Submission of the DBE Letter of Intent

The SOITEAM data plan must be supported by the submission of a detailed DBE Letter of Intent, for each DBE proposed for the performance of work to achieve the contract goal and is due at the time of submission.

In no case should a Vendor remove, replace, or reduce the commitment to a DBE listed in the initial SOITEAM data Plan and corresponding Letter of Intent without prior written consent of ISTHA. Under no circumstances is the Vendor allowed to change the contract percentage submitted or any other documentation unrelated to this special provision.

The signatures on these forms must be original signatures. All elements of information indicated on Form Utilization Plan must be provided, including but not limited to:

6.1.1 The name and address of each DBE to be used;

6.1.2 A full description, of the commercially useful function to be performed by each DBE. Descriptions such as “miscellaneous” are not acceptable.

6.1.3 If the DBE is the Prime Vendor, they should indicate the percentage of work to be counted toward DBE participation on the Letter of Intent.

6.1.4 The letter of Intent will serve as the commitment statement signed by the Vendor and each DBE evidencing availability and intent to perform a commercially useful function on the project; and

6.1.5 If the Vendor is a joint venture comprised of DBEs and non-DBEs, the Plan must also include a clear identification of the portion of the work to be performed by the DBE joint venture partner(s).

6.1.6 If the Vendor is unable to meet the goal, it must demonstrate it made good faith efforts to do so, as described in this Special Provision and detailed in section 6.6 below.

6.1.7 The contract will not be awarded until the DBE Letter of Intent, including if applicable, the Vendor’s good faith efforts to meet the goal, is approved by ISTHA. The DBE SOITEAM plan and Letter of Intent will be approved if it demonstrates that DBEs will be used to perform a commercially useful function sufficient to meet the contract goal, or that the Vendor made sufficient good faith efforts, as defined in this Special Provision, to meet the goal.

### 6.2 Counting DBE Participation

The DBE Utilization Plan’s DBE commitments represent work expected to be performed and paid for upon satisfactory completion. ISTHA is only able to count toward the achievement of the contract goal the value of payments made for the work actually performed by DBEs. The Tollway will count DBE participation, and the Vendor will receive credit towards meeting the DBE contract goal, as follows:

6.2.1 The entire amount of that portion of work that the DBE is certified to perform, as indicated on the DBEs Letter of Certification, and that is performed by the DBE’s own forces either as the Vendor or a Subconsultant shall be counted. **Work that the DBE subcontracts to a non-DBE does not count toward the DBE goal.**

6.2.2 The entire amount of fees or commissions charged by a DBE for providing a *bona fide* service, such as professional, technical, Vendor or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, shall be counted, provided the fee is reasonable and not excessive as compared with fees customarily charged for similar services.

6.2.3 When a DBE performs as a participant in a Joint Venture, only the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the Joint Venture's contract that is performed by the DBE with its own forces and for which it is separately at risk, shall be counted. A Joint Venture may also count the dollar value of work subcontracted to DBEs other than the DBE Joint Venture partner(s). Work performed by the forces of the non-DBE joint venture partner shall not be counted toward the DBE goal. The Tollway will evaluate the Joint Venture agreement, which must be submitted with the DBE Utilization Plan, for conformance with this Special Provision and eligibility for credit towards meeting the goal. The agreement must describe in detail the financial contribution of each partner; the list of personnel and equipment contributed and used by each partner; the responsibilities of each partner for each aspect of the joint venture; if applicable, the bonding capacity of each partner; if applicable, the prequalification

status of each partner; the basis and distribution of all profits and losses; and any other elements deemed relevant by the Tollway.

6.2.4 When a DBE firm loses its DBE eligibility and certification, the following actions must be taken:

(a) When a prime contractor has made a commitment to using an ineligible DBE firm but a decertification notice is issued before the prime contractor executes a subcontract, the ineligible firm does not count toward the contract goal, and the prime contractor must be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.

(b) When the Tollway has made a commitment to using an ineligible DBE prime contractor, but a decertification notice is issued before the contract is awarded to the ineligible DBE firm, the ineligible DBE firm does not count toward the contract goal and the Tollway must meet the contract goal with an eligible DBE firm.

(c) If a prime contractor executes a subcontract with a DBE firm before the firm loses its DBE eligibility and certification, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work. In this case, or in a case where a prime contract has been awarded to a DBE that is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the notice of ineligibility is issued may count toward the contract goal. In determining achievement of the contract goal, the participation of a DBE shall not be counted until that amount has been paid to the DBE.

### 6.3 Demonstrating Commercially Useful Function

Only expenditures to a DBE that is performing a Commercially Useful Function shall be counted. To determine whether a DBE is performing a Commercially Useful Function, the Tollway will evaluate the amount of work subcontracted, industry practices, whether the amount the DBE is to be paid under the contract is commensurate with the work it is actually performing and other relevant factors. A DBE performs a commercially useful function when it is responsible for the execution of the work and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

6.3.1 To perform a commercially useful function, the DBE must be responsible, for carrying out all aspects of the services identified in the Letter of Certification and awarded from start to finish.

6.3.2 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, ISTHA will examine similar transactions, particularly those in which DBEs do not participate.

6.3.3 If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, ISTHA will presume that the DBE is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function as provided in this section, the DBE and the Vendor may present evidence to rebut this presumption.

### 6.4 Extended Documentation Period for Vendors with a DBE Commitment Below the Advertised DBE Goal

Each selected Vendor who has a DBE commitment less than the advertised DBE goal shall be allowed, upon email notification from the Tollway, an extended documentation period which will extend until 5:00 pm CT on the second business day after the day the notification is sent (e.g. if a Vendor is notified on Monday, extended documentation period concludes on Wednesday at 5pm). The extended

documentation period allows Vendors solely to supplement their initial Utilization Plan to add DBE participation to meet the stated DBE participation goal or to demonstrate additional good faith efforts in obtaining DBE participation. The Vendor may take other action beyond any stated additional efforts in order to obtain additional DBE commitments. The Vendor shall submit an amended DBE, LOI and SOITEAM data form if additional DBE commitments to meet the contract goal are secured by the end of the extended documentation period. If additional DBE commitments sufficient to meet the advertised contract goal are not secured, the Vendor shall report the final good faith efforts made during the extended documentation period along with a request for a waiver pursuant to section 6.6 of this section. All additional efforts taken by the Vendor before and during the extended documentation period will be considered as part of the Vendor's good faith efforts.

The extended documentation period is intended to allow Vendors that have made a good faith effort to secure DBE participation an opportunity to meet the stated contract goal. Vendors are expected to have utilized good faith efforts in compiling their initial DBE SOITEAM and LOI, and the DBE participation indicated in the initial DBE SOITEAM plan and LOI should reflect the participation the Vendor could achieve through good faith efforts. In no case should a Vendor remove, replace or reduce the commitment to a DBE listed in the initial Plan without prior written consent of ISTHA. Under no circumstances is the Proposer allowed to change the contract amount submitted or any other documentation unrelated to this special provision. When ISTHA determines that a Vendor, either through a pattern of conduct or with respect to a single proposal, has failed to discharge its good faith efforts obligations in this intended fashion, ISTHA, in its discretion, may reject the proposal outright without allowing the proposer to take advantage of the extended documentation period.

### 6.5 Good Faith Efforts Procedures

If the proposer cannot obtain sufficient DBE commitments to meet the contract goal, the Vendor must document its good faith efforts to meet the goal, including any DBE participation secured as detailed in Form(s) SOITEAM and Letter of Intent, using the Good Faith Efforts Contact Log and Checklist. If the DBE contract goal was not achieved by a Vendor, the Vendor must submit its good faith efforts documentation, including the Good Faith Efforts Contact Log and Checklist DBE. Documentation submitted after PSB due date, except as provided for in Section 6.5 above, will not be accepted or reviewed.

Demonstrating good faith efforts means that the Proposer must show that all necessary and reasonable steps were taken to achieve the contract goal. Necessary and reasonable steps are those that could reasonably be expected to obtain sufficient DBE participation. ISTHA will consider the quality, quantity and intensity of the kinds of efforts that the Proposer has made. Mere *pro forma* efforts are not good faith efforts; rather, the Proposer is expected to have taken those efforts that would be reasonably expected of a Proposer actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

If ISTHA determines that the Vendor has made a good faith effort to secure the work commitment of DBEs to meet the contract goal, ISTHA will award the contract provided that the Proposer is otherwise eligible for award and award is in the Tollway's best interest.

The following is a list of types of action that ISTHA will consider as part of the evaluation of the Proposer's good faith efforts to obtain DBE participation. These listed factors are not intended to be a mandatory checklist and are not intended to be exhaustive. Other factors or efforts brought to the attention of ISTHA may be relevant in appropriate cases and will be considered by ISTHA.

6.5.1 Soliciting through all reasonable and available means (*e.g.*, attendance at DBE Networking Sessions sponsored by ISTHA, advertising and/or written notices) the interest of all DBEs that have the capability to perform the work of the contract. A list of certified DBEs considered to determine the contract goal may be provided by the Tollway, but should not be considered exhaustive, and other firms may be available for solicitation by the Proposer. The Proposer must

solicit this interest within sufficient time to allow the DBEs to respond to the solicitation, but in any event, no later than five (5) calendar days prior to the submission date. At least two methods of solicitation of DBEs must be used (*e.g.*, email and fax). The Proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow- up initial solicitations.

6.5.2 Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out service items into economically feasible units to facilitate DBE participation, even when the prime Vendor might otherwise prefer to perform these services items with its own forces.

6.5.3 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.

6.5.4 Negotiating in good faith with interested DBEs.

6.5.4.1 Making a portion of the work available to DBE Subconsultants and to select those portions of the work consistent with the available DBE Subconsultants, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, e mail address and telephone numbers 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.

6.5.4.2 A Proposer using good business judgment would consider a number of factors in negotiating with Subconsultants, including DBE Subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime Vendor 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 Vendors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

6.5.5 DBEs may not be rejected as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Vendor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of proposals in the Vendor's efforts to meet the contract goal.

6.5.6 Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the Tollway or the Vendor.

6.5.7 Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

6.5.8 Effectively using the services of available minority/women community organizations; minority/women Vendors' 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.

In determining whether a Vendor made good faith efforts, ISTHA may take into account the performance of other Proposers in meeting the contract goal or of Proposers in meeting the goal on contracts of a similar nature. For example, when the apparent successful Proposer fails to meet the contract goal, but others meet it, ISTHA will review whether, with additional reasonable

efforts, the apparent successful Proposer could have met the goal. If the apparent successful Proposer fails to meet the goal but meets or exceeds the average DBE participation obtained by other Proposers, ISTHA may view this, in conjunction with other factors, as evidence of the apparent successful Vendor having made good faith efforts.

6.5.9 A Proposer that rejected a DBE based on price must provide to ISTHA all quotes received for the scope of work proposed by the DBE from all firms, including non-DBEs.

6.5.10 The Proposer may request administrative reconsideration of a pre-final determination on its DBE Utilization Plan adverse to the Vendor by filing a request, within five working days after the Proposer receives written notice of the determination, which five-day period shall begin immediately after ISTHA provides the Proposer written notice of its pre-final determination, by delivering the request to the Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, contractcompliance@getipass.com, (630) 241-6800 ext. 4615.
Submission via e-mail is acceptable. Deposit of the request in the United States mail on or before the fifth business day shall not be deemed delivery. The pre-final determination shall become final if a request is not received within the five-day period.

6.5.11 A request may provide additional written documentation and/or argument concerning the issue of whether an adequate good faith effort was made to meet the contract goal. In addition, the request shall be considered consent by the Vendor to extend the time for award. The request will be forwarded to the Illinois State Toll Highway Authority, Procurement Department, Chief of Contract Compliance. The Chief of Contract Compliance may extend an opportunity to the Proposer to meet in person in order to consider all issues of whether the Vendor made a good faith effort to meet the goal. Such meeting shall extend the time for a decision. After the review by the Chief of Contract Compliance, the proposer will be sent a written decision within ten (10) working days after receipt of the request for reconsideration or the date of the meeting, explaining the basis for finding that the Vendor did or did not meet the goal or make adequate good faith efforts to do so. A final decision by the Chief of Contract Compliance that a good faith effort was made shall approve the DBE Utilization Plan submitted by the Vendor and shall clear the contract for award. A final decision that a good faith effort was not made shall render the bid non-responsive. The administrative reconsideration procedures described in this section are not intended to allow a Vendor to have an additional opportunity to submit a new DBE Utilization Plan or evidence of additional good faith efforts performed after bid submission.

## 7. CONTRACT COMPLIANCE

### 7.1 Forms to be Submitted

All work indicated for performance by an approved DBE shall be performed, managed and supervised by the DBE executing the DBE Letter of Intent.

To receive a notice to proceed, the Vendor must submit for the Tollway's review signed subcontracts with all DBEs proposed to meet the goal within twenty (20) calendar days of award.

### 7.2 Changes to the DBE Utilization Plan

The Vendor may not make changes to its contractual DBE commitments, substitute a DBE Subconsultant or make any other changes to the DBE Utilization Plan without the prior written approval of the Tollway's Contract Compliance Team. Unauthorized changes or substitutions, including performing the work designated for a Subconsultant with the Vendor's own forces, shall be a violation of this Special Provision and a breach of the contract.

If a supplement is issued by the Tollway or supplemental Work is authorized, the Vendor, in ISTHA's discretion, will be required to amend its DBE Utilization Plan to reflect the recalculated DBE dollars and any percentage change in the goal. The DBE contract goal may change in the Tollway's discretion to reflect a supplement.

The facts supporting the request for changes to the DBE Utilization Plan must not have been known or reasonably could not have been known by the parties prior to entering into the subcontract. The Vendor must negotiate in good faith with the Subconsultant to resolve the problem. If requested by either party, the Tollway shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the DBE can be substituted only where agreement cannot be reached for a reasonable price or reasonable schedule for the correct scope of work. Requests should be sent to contractcompliance@getipass.com.

Substitutions of a DBE Subconsultant shall be permitted only under the following circumstances:

7.2.1 Unavailability after receipt of reasonable notice to proceed;

7.2.2 Failure of performance;

7.2.3 Financial incapacity;

7.2.4 Refusal by the Subconsultant to honor the bid or bid price or scope or schedule;

7.2.5 Material mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

7.2.6 Failure of the Subconsultant to meet insurance, licensing or bonding requirements;

7.2.7 The Subconsultant's withdrawal of its bid or bid; or

7.2.8 Decertification of the Subconsultant as a DBE, other than on the basis of its exceeding firm size or personal net worth limits.

If it becomes necessary to substitute a DBE or otherwise change the DBE Utilization Plan, the Vendor must notify the Illinois State Toll Highway Authority, Contract Compliance Team in writing of the request to substitute a DBE or otherwise change the DBE Utilization Plan to contractcompliance@getipass.com. The request must state specific reasons for the substitution or change. A letter from the DBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request. Any refusal by the DBE to provide such a letter must be documented by the Vendor. The Illinois State Toll Highway Authority, Contract Compliance Team will approve or deny a request for substitution or other change in the DBE Utilization Plan in writing within five (5) working days of receipt of the request.

Where the Vendor has established the basis for the substitution to the Tollway's satisfaction, it must make good faith efforts to meet the contract goal by substituting a DBE Subconsultant. Documentation of a replacement DBE, or of good faith efforts, must meet the requirements in Section 6.6 If the contract goal cannot be reached and good faith efforts have been made, the Vendor may substitute with a non-DBE. If the Vendor plans to hire a Subconsultant for any scope of work that was not previously disclosed in the DBE Utilization Plan, the Vendor must obtain the approval of the Illinois State Toll Highway Authority,

Contract Compliance Team to modify the DBE Utilization Plan and must make good faith efforts to ensure that DBEs have a fair opportunity to bid on the new scope of work.

A new subcontract, a new Form Utilization Plan for the substituted DBE (if applicable) and an amended DBE Utilization Plan must be executed and submitted to the Illinois State Toll Highway Authority, Contract Compliance Team at contractcompliance@getipass.com within five (5) working days of the Vendor's receipt of the Tollway's approval for the substitution or other change.

### 7.3 The submission of the DBE Payment Report

DBE Payment reporting, in such form or format as specified by the Tollway, must be submitted as specified in the Contract Compliance Payment Reporting Instructions posted on the Tollway's website.

The Vendor shall maintain a record of payments to DBEs and all other Subconsultants for work performed. The records shall be made available to ISTHA for inspection and copying upon request. Not complying with this requirement may delay processing of invoices.

All active Tollway vendors will be required to use B2GNow. Both diverse and non-diverse Subconsultant payments must be reported and confirmed monthly in the system at https://iltollway.diversitysoftware.com/.

## 8. SANCTIONS

The Tollway will periodically review the Vendor's compliance with this Special Provision and the terms of its contract with the Vendor, including the DBE Utilization Plan. Without limitation, the Vendor's failure to comply with this Special Provision or its DBE Utilization Plan, failure to cooperate in providing information regarding its compliance with this Special Provision or its DBE Utilization Plan, or provision of false or misleading information or statements concerning compliance, certification status of DBEs, good faith efforts or any other material fact or representation shall constitute a material breach of this contract and may result in damages to the Tollway. Such breach or damages entitle the Tollway to declare a default, terminate the contract, impose liquidated damages or exercise those remedies provided for in the contract or at law or in equity.

Sanctions may include, but are not limited to, monetary sanctions, including the cost of audits resulting in findings of noncompliance; damages based on the damage to the Tollway from the Vendor's lack of good faith efforts and failure to meet the other requirements of this Special Provision in an amount up to the monetary difference between the amount committed to by the Vendor in its DBE Utilization Plan and the amount actually paid to DBEs; deeming the Vendor non-responsible with respect to future business with the Tollway; and any other sanctions as are permitted by law.

In imposing sanctions, the Tollway will consider the *bona fide* efforts of the Vendor to meet the DBE goal, its history of good faith efforts on other Tollway contracts, the size of the contract, the degree to which the Vendor fell below the DBE goal, and other factors deemed relevant by the Tollway.

The Vendor may appeal the decision to impose sanctions within five (5) working days of its receipt of the written decision by filing an appeal in hard copy or electronic format with the Illinois State Toll Highway Authority's Sanctions Committee. Actual delivery of the hard copy and electronic formats within the five (5) business days is required and mere posting by mail within that period is not sufficient. An appeal may provide additional documentation and/or arguments and request an oral presentation to the Tollway's Sanctions Committee. The Tollway's Sanctions Committee shall notify the Vendor in writing of the final determination and the basis for the determination within ten (10) working days after receipt of the appeal or after the date of the oral presentation by the Vendor, whichever is later. The Vendor may appeal an adverse decision within five (5) working days of receipt of the final determination to the Executive Director by filing an appeal in hard copy and electronic format to the Illinois State Toll Highway Authority, Executive Director, 2700 Ogden Avenue, Downers Grove, Illinois 60515-1703, contractcompliance@getipass.com. The Executive Director or his/her designee, which designee shall not be employed within the Tollway's Contract Compliance Team, may solicit information from the Vendor, the Diversity and Strategic Development Department, the Chief of Contract Compliance, the Law Department, Internal Audit, the Procurement Department, and anyone else in his/her discretion, and shall render a final decision on the Vendor's appeal within thirty (30) calendar days.

## 9. INACCURATE OR FRAUDULENT REPORTING

The Vendor has a duty to accurately report information pursuant to this Special Provision. A Vendor who fails to supply accurate information is subject to sanctions imposed by the Tollway. A Vendor who intentionally supplies inaccurate information may be subject to civil and/or criminal sanctions.

## 10. OTHER REGULATIONS

The adherence to the DBE goal does not abrogate other responsibilities of the Vendor to comply with affirmative action requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the contract.

## 11. DBE PAYMENT & JOINT CHECK REQUEST

(a) Timely DBE Payment – Prime consultants should pay their DBE subconsultants for work completed as required within 30 days after the Tollway pays the prime consultant for the DBE subconsultants' work. Similarly, first tier DBE subconsultants should pay their lower tier subconsultants within 30 days after receiving payment from the prime consultant. DBE subconsultants should verify compliance with this timely payment policy in the Tollway's B2Gnow system when responding to monthly audit notices.

(b) Joint Check Request – Prime consultants and DBE subconsultants that require the use of joint checks to pay material suppliers must complete and submit the Tollway's DBE Joint Check Request Form. The prime consultant must ensure that this form is completed and submitted to Tollway Contract Compliance within 30 days after the need for such a payment arises. The form must be completed in its entirety and signed by the DBE subconsultant, the material supplier and the prime consultant. No other joint check request form will be accepted. The Tollway will review and approve or deny the joint check request within 15 business days after receiving the completed Joint Check Request Form. It is the responsibility of the prime consultant and DBE subconsultant to ensure compliance with all DBE joint check policy requirements as outlined in the Tollway's Joint Check policy, including adherence to the commercially useful function, DBE independence and check payment verification (by providing a copy of the cancelled joint check to Contract Compliance) requirements.

## 12. GRANTING DBE CREDIT FOR CERTIFIED VENDORS NOT INCLUDED IN THE ORIGINAL APPROVED U-PLAN

On Tollway construction and professional services contracts, DBE credit may be granted for work performed by a certified DBE that was not listed on the original approved utilization plan if the following requirements are met:

(a) The DBE firm's certification was active, at all times, while it performed the scope of work, and the scope of work it performed is in the area(s) of specialty for which the DBE firm was certified.

(b) The DBE firm performed a commercially useful function for the scope(s) of work for which DBE credit is being requested, and all the other requirements for counting DBE credit have been met.

(c) While the prime contract is in effect, the prime consultant submits a revised u-plan including the DBE firm to Tollway Contract Compliance, as well as documentation verifying actual payment to the DBE firm – such as lien waivers, cancelled checks, or evidence of ACH transmittals.

## DEMONSTRATION OF GOOD FAITH EFFORTS TO ACHIEVE DBE SUBCONTRACTING GOAL

If the DBE contract goal was not achieved, the Good Faith Efforts checklist and contacts log must be submitted with the Proposal. Failure to do so may render the Proposer's solicitation response non-responsive and cause it to be rejected, or render the Proposer ineligible for contract award, at ISHTA's sole discretion. The Proposer must provide all evidence relied upon in support of its Good Faith Efforts with its Proposal.

Good Faith Efforts Checklist

Insert on each line below the initials of the authorized Proposer representative who is certifying the Proposer has completed the activities described below. If any of the items were not completed, attach a detailed written explanation. If any other efforts were made to obtain DBE participation in addition to the items listed below, attach a detailed written explanation.

_____ Identified portions of the contract work capable of performance by available DBEs, including, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation even when the Proposer could perform those scopes with its own forces.

_____ Solicited through reasonable and available means (e.g., networking session, written notices, advertisements) DBEs to perform the types of work that could be subcontracted on this project, within sufficient time to allow them to respond.

- ILUCP: DBE Directory
- City of Chicago's M/WBE Directory: Chicago Certified Firms
- County of Cook, IL's: M/WBE/VBE-certification
- Small Business Administration's SBA 8(a) Directory: SBA Directory

_____ Provided timely and adequate information about the plans, specifications and requirements of the contract. Followed up initial solicitations to answer questions and encourage DBEs to submit proposals.

_____ Negotiated in good faith with interested DBEs that submitted B ids and thoroughly investigated their capabilities.

_____ Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as may be required for performance of the contract (if applicable).

_____ Utilized resources available to identify available DBEs, including but not limited to DBE assistance groups; local, state and federal minority or women business assistance offices; and other organizations that aid in the recruitment and placement of DBEs.

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and authority to provide above information

| | |
|---|---|
| Print Name | Phone contact |
| Position | E-mail address |
| Signature | Date |

## GOOD FAITH EFFORTS CONTACT LOG

Use this Log to document all contacts and responses (telephone, e-mail, fax, etc.) regarding the solicitation of certified VOSB vendors within the specific scope of work selected. **It is not necessary to show contacts with certified DBE vendors who are identified on the Letter(s) of Intent. Keep and submit copies of all emails sent and received from prospective vendors. Include a copy of the commodity list or scope of work you solicited prospective vendors to perform.** Duplicate this log as necessary; do not limit your contacts to the number of spaces shown.

Project Name: _____ Project Number: _____

Proposer Name: _____ Contact Person: _____

| Name of Certified DBE Vendor | Date and Method of Contact | Scope of Work Solicited | Reason Agreement Was Not Reached |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Affidavit of Truthfulness: Signature below affirms accuracy of Good Faith Efforts and authority to provide above information

_____ Print Name

_____ Position

_____ Signature

_____ Phone contact

_____ E-mail address

_____ Date

# EXHIBIT H - Letter of Intent

**(PRIME CONTRACTOR MUST SUBMIT EXHIBIT H FOR EACH OF ITS DBE SUBCONTRACTORS INCLUDING FOR A SELF-PERFORMING DBE PRIME)**

Instructions: The Prime Vendor is required to submit a separate, signed Letter of Intent (LOI) from each DBE certified vendor. **LOIs must be submitted with the SOI and must be signed by both parties**. The Prime Vendor shall not prohibit or otherwise limit the DBE certified vendor(s) from providing subconsultant proposals to other potential vendors. Each LOI must include the negotiated contract percentage and a detailed scope of work to be performed by each identified DBE certified vendor. All LOIs shall be subject to Agency approval. Any changes involving or affecting the identified DBE certified vendor may not be permitted without written approval of the procuring Agency.

Project Name: _____ Project/Solicitation Number: _____

Name of Prime Vendor: _____ DBE Compliance Contact: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

Name of Certified DBE Vendor: _____

Address: _____ DBE Compliance Contact: _____

City: _____ State: _____ Zip Code: _____

Telephone: _____ Fax: _____ Email: _____

Type of agreement: ☐ Services

Anticipated start date of the Certified DBE Vendor: _____

Proposed ____% Amount_____of Contract to be performed by the DBE Vendor.

***NOTE: The Prime Vendor must indicate the percentage and Dollar value of the estimated contract award that will be subcontracted to the certified DBE Vendor.***

Detailed description of work to be performed by the DBE Vendor: (Please be specific about the scope(s) of work to be performed and associated NAICS/NIGP codes - to demonstrate the performance of a commercially useful function):

| |
|---|
| |

The Vendor and the certified vendor above hereby agree that upon the execution of a contract for the above-named project between the Vendor and the State of Illinois, the Certified DBE Vendor will perform the scope of work in the percentage as indicated above.

Vendor (Company Name and D/B/A):

_____

Signature

Print Name: _____

Title: _____

Date: _____

Certified DBE Vendor (Company Name and D/B/A):

_____

Signature

Print Name: _____

Title: _____

Date: _____