

EXHIBIT 7

DEVELOPER'S DBE PERFORMANCE PLAN

1.0 INTRODUCTION

1.1 Applicability

Developer has established a Disadvantaged Business Enterprise (DBE) program in accordance with provisions in Exhibit 6 that are consistent with the U.S. Department of Transportation (DOT), 49 CFR Part 26, TxDOT's DBE Program, and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended.. TxDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Developer assures that it will comply with the provisions stated above.

1.2 Policy Statement

It is the policy of Developer to provide opportunities and to assist and encourage DBE firms, as defined in 49 CFR Part 26, to participate in DOT-assisted contracts.

Developer believes that equal opportunity should be afforded to all business enterprises in the solicitation of bids, whether federal or state funds are used, for subcontracts, material purchases, supplies, services, and hauling regardless of race, color, religion, sex, national origin, age, or handicap.

1.3 Objectives

Developer will extend to all DBEs the maximum practicable opportunity to fully participate in the procurement and subcontract process to the fullest extent consistent with the efficient contract performance financed in whole or part with federal funds.

The DBE project participation goal with respect to design services and construction is 6% of the Development Price

Developer may achieve the program goals by contracting directly with DBEs or indirectly through subcontracting opportunities. To ensure support of these opportunities, the objectives of the Developer's DBE Program are as follows:

1. Ensure nondiscrimination in the award and administration of all contracts;
2. Create a level playing field in which DBE's can compete fairly for all contracts;
3. Ensure the Developer DBE Program meets or exceeds all applicable laws, regulations, and implementing policies;

4. Remove barriers to the participation of DBEs in all contracts
5. Assist in the development of DBE firms so they may compete successfully in the market place outside the DBE Program.
6. Assist and encourage DBEs to pursue public and private contracts as the prime contractor, subcontractor, construction manager, program manager or other business relationship.

Developer has designated the following individual as the as the DBE Liaison Officer:

Rita Phillip
Zachry-Odebrecht Parkway Builders
12625 Wetmore Road, Suite 301
San Antonio, TX 78247
Phone: 210-871-3219
Email: rita.phillip@zachrycorp.com

In this capacity, Ms. Phillip is responsible for implementing all aspects of the DBE program for the Initial Scope of Work and the Update Work to include the following:

- General overall responsibility for the DBE plan;
- Preparing and submitting reports as required by TxDOT;
- Coordinating activities during any compliance reviews;
- Coordinating activities involving DBEs, as related to this plan;
- Coordinating and conducting outreach events with TxDOT and other agencies;
- Monitoring attainment of proposed goals;
- Training and advising staff on DBE program requirements;
- Ensuring that appropriate provisions of the DBE Program are included in bid proposals and contract specifications;
- Monitoring and Tracking data to determine the level of DBE utilization; and
- Participating in DBE trade shows and conferences, and any other useful outreach events to identify and utilize DBEs.

2.0 DBE PERFORMANCE PLAN DEVELOPMENT

The following procedures are pursuant to DOT 49 CFR Part 26 rules, TxDOT'S DBE Program and 43 Texas Administration Code (TAC), Chapter 9, Sections 9.200 – 9.242, as amended:

2.1 Outreach

Developer will participate in outreach programs that are designed to maximize opportunities for DBE firms to contract with Developer. Outreach efforts will include, but not be limited to, one or more of the following:

- ◆ Arrange in-house communications to maintain employee awareness of the program and to encourage identification and referral of potential DBEs.
- ◆ Coordinate efforts with organizations dedicated to assisting DBEs by joining DBE trade associations when feasible, and attending, sponsoring and conducting DBE procurement conferences, trade shows, workshops, pre-bid meetings and mixers whenever possible, specifically focused on the development of DBE and minority-owned construction firms and construction-related industry businesses; assisting DBEs to become more knowledgeable of Developer's procurement activities and business opportunities.
- ◆ Notify and assist DBEs with information on bid specifications and compliance with procurement procedures for work the proposer/vendor intends to bid on prior to submission of the response. The notice, in all instances, will include:
 1. Scope of Work (SOW)
 2. Location and availability of plans and specifications for review (if applicable)
 3. Information on Bonding and Insurance requirements
 4. Identification and information of the point of contact personnel
 5. Response deadline
- ◆ Provide potential DBE firms reasonable time to respond to the bids. "Reasonable Time" to respond in this context is no less than ten (10) working days from the required date of submittal, unless circumstances require a different time frame as determined by Developer and is documented in the contract file.
- ◆ Divide contract work to be performed into economically feasible units or lots to facilitate and encourage DBE participation where feasible.
- ◆ Negotiate in good faith with interested DBEs by making a portion of the work available to DBE subcontractors and suppliers and selecting those portions of the work or material needs consistent with the available DBE subcontractors and suppliers.
- ◆ Advertise solicitations of DBE subcontracting opportunities in general circulations, trade associations, Internet resources, minority/women focus media and/or with minority/women organizations to disseminate to their members.
- ◆ Assist DBE's in obtaining bonding, lines of credit, or insurance.

3.0 General Requirements

3.1 Good Faith Efforts

Developer is obligated to make good faith efforts. Developer will demonstrate that it has done so either by meeting the contract DBE goals or documented evidences of good faith efforts.

3.2 Demonstration of Good Faith Efforts

Developer will make adequate good faith efforts to obtain DBE participation as stated and defined in 49 CFR Part 26, Appendix A. Developer will submit supporting documentation identifying what good faith effort was made in accordance with the criteria listed below to TxDOT for review and approval:

- ◆ Attendance at any pre-bid/pre-proposal conferences scheduled by the Owner;
- ◆ Advertising in area publications, including daily newspapers, trade associations, and/or minority focused media;
- ◆ Personal contact with DBE firms to determine with certainty whether or not these firms are interested in bidding work with Developer;
- ◆ Providing interested DBE firms with adequate information about contracting opportunities and negotiating in good faith by making a portion of the work available to DBE subcontractors and suppliers and selecting those portions of the work or material needs consistent with the available DBE subcontractors and suppliers;
- ◆ Identifying and assisting DBEs in obtaining bonding, or insurance as required by the subcontractor;
- ◆ Direct DBEs to technical assistance services;
- ◆ Documenting each DBE firm contacted and noting decisions regarding inclusion or exclusion, and the reason for the decision.

4.0 CATEGORIES OF WORK ANTICIPATED FOR DBE PARTICIPATION

4.1 Developer anticipates the following categories of services and work for potential DBE participation

- ◆ Engineering and consulting services
- ◆ Trucking
- ◆ Rebar furnishing and/or installing
- ◆ Sand supply
- ◆ Stabilized materials supply

- ◆ Roadway signs
- ◆ Guardrail and cable rail
- ◆ General concrete flatwork (concrete sidewalks, curb, curb & gutter, riprap)
- ◆ Steel structures
- ◆ Asphalt bondbreaker
- ◆ General support services
- ◆ General and safety supplies

4.2 Schedule for submission of DBE commitment agreements based on Developer's initial Project schedule:

- ◆ Developer shall submit DBE commitment agreements as DBE Subcontractors are contracted

5.0 SELECTION

5.1 Notification

Developer will promptly provide TxDOT with an executed Non Traditional Contract Form upon selection of any DBE Subcontractor selected by Developer to perform design and/or construction work.

5.2 DBE Credit Counting

DBE participation will be counted toward meeting the contract's DBE goal in accordance with 49 CFR 26.55.

5.3 Contract Amendments

If at any time during the term of the contract Developer desires to make changes to the approved DBE Performance Plan, or replace or terminate a DBE firm, the proposed change must be reviewed and approved by TxDOT before the change will be effective.

5.4 Substitution and Replacement

Developer will comply with 49 CFR §26 and 43 TAC §9.229, DBE Substitution and Termination, prior to terminating or substituting a DBE. In the event that a DBE Subcontractor is unwilling or unable to complete their contracted work Developer will provide written notification to the DBE and TxDOT, providing the DBE five days in which to respond to Developer's reasons for the termination. If TxDOT approves the termination, Developer will make a good faith effort to replace the terminated DBE Subcontractor with another DBE, to the extent needed to meet the Agreement goal. Developer will submit the applicable Non-Traditional Contract commitment form for the substitute DBE firm(s).

6.0 REPORTING

6.1 Reports

Developer will submit monthly reports, after work begins, on payments to all Subcontractors both DBE and non-DBE, within 15 days after the end of each calendar month. Developer will submit a final summary report of DBE payments upon completion of the Project.

If the DBE goal requirements are not met, documentation supporting good faith efforts will be submitted to TxDOT for review and approval. Negative reports will be submitted when no activity has occurred in a monthly period.

Developer will provide copies of Subcontracts or agreements and other documentation upon request.

Developer will provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all Subcontractors were paid from the previous month's payments and retainage was released for those whose work is complete. A completed Prompt Payment Certification Form 2177 will be submitted each month and the month following the month when final acceptance occurred at the end of the Project.