

SUPPLIER DBE REQUIREMENTS

Progress Rail has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Progress Rail has received Federal financial assistance from the (DOT), and as a condition of receiving this assistance, Progress Rail has signed an assurance that it will comply with 49 CFR Part 26. The Supplier DBE Requirements set forth herein apply to any DBE engaged by Progress Rail, or any supplier engaging a DBE on behalf of Progress Rail, and are incorporated and made part of Progress Rail's Standard Purchase Order Terms and Conditions, which are available at: <https://www.progressrail.com/en/Company/supplychain.html>.

It is Progress Rail's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to participate with Progress Rail in procurements subject to government-imposed DBE requirements and otherwise. Suppliers and DBEs are integral partners in Progress Rail's success, and Progress Rail fully embraces the commitment to provide DBEs with the maximum practical opportunities to participate in our government procurements.

Products and services procured by Progress Rail may be used in fulfilling a U.S. government prime contract or subcontract, a federally funded contract, or state or other government contract requiring compliance with various procurement or non-procurement regulations and socioeconomic programs.

Therefore, Supplier is subject to the applicable U.S. and state government procurement Laws in effect at the time of accepting the Order, including, but not limited to, Supplier's representations to Progress Rail about U.S. Small Business Administration or state and local classifications or status as a minority or disadvantaged business enterprise, including, but not limited to, size standards, ownership, and control, are accurate and complete.

If Progress Rail engages Supplier as a DBE, or Supplier, pursuant to its engagement by Progress Rail, engages an entity that qualifies as a DBE (either a "Qualifying Entity"), Supplier has a duty to ensure the Qualifying Entity maintains its status and size requirements for the duration of this Order and must immediately notify Progress Rail if there is a change in the size standard, ownership, or control of the Qualifying Entity.

Supplier represents and warrants that it, or such Qualifying Entity it engages as a DBE pursuant to the fulfillment of its contractual obligations to Progress Rail, is a for-profit small business concern (a) that is at least 51% owned by one or more

individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more socially and economically disadvantaged individuals who own it, and (c) whose eligibility is evidenced by a current letter issued by the Unified Certification Program of the State where the DBE is licensed to conduct business, which letter shall be provided to Progress Rail upon request. Supplier further represents and warrants that the work the Qualifying Entity is performing is in accordance with the same NAICs code for which it was engaged.

Progress Rail monitors sub-supply procurements awarded by Progress Rail to suppliers and DBEs and enforces certain DBE requirements, whether imposed pursuant to government funding or proactively by Progress Rail. Any Supplier who fails to follow, or fails to require its subcontractors or sub-suppliers to follow, the Supplier DBE Requirements ("Requirements") as stated herein or in their contract terms and conditions, including any non-discrimination provisions, could be subject to withholding progress payments, termination of the agreement or legal action.

The Requirements stated herein are incorporated by reference and apply as if fully stated therein to Progress Rail's Standard Terms and Conditions of Purchase and any purchase order or contract issued by Progress Rail to Supplier ("Progress Rail Contract"), and Supplier is responsible for ensuring its subcontractors or sub-suppliers performing pursuant to the fulfillment of Supplier's contractual obligations to Progress Rail agree in writing to comply, and do comply, with such Requirements. In accordance with, and in addition to, the foregoing paragraphs, Supplier hereby agrees to the following:

- A. Supplier shall include the following provisions in the General Provisions of each subcontract it awards in support of a DBE goal:
 - (1) "In the event the contractor acting as a DBE subcontracts any work pursuant to contractual obligations to Progress Rail, contractor shall at all times in connection with such obligations to Progress Rail exercise responsibility for at least 30 percent of the total cost of its contract with its own work force."
 - (2) "The contractor shall not discriminate based on race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of the FTA TVM or US DOT funded contracts. Failure by the contractor to carry out these requirements is a material breach of the contract, which may

result in the termination of the contract or such other remedy as Buyer deems appropriate."

- (3) "Supplier agrees to pay each sub-supplier under this contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment that Supplier receives from Progress Rail and fulfills the contractual obligation. Supplier does not hold retainage. Any delay or postponement of payment may occur only for good cause following written approval by the Progress Rail. This clause applies both to DBE and non-DBE procurement agreements."

B. If Supplier, pursuant to its engagement by Progress Rail, engages one or more subcontractors that qualify as DBE(s):

- (1) Supplier shall monitor the performance of, collect and report data on DBE participation to which shall be submitted with each payment request. Failure to submit these reports may result in suspension of contract payments. During the term of each TVM contract when there is DBE participation, Supplier will certify with each payment request that prompt payments to DBEs and non-DBEs are made within the timeframes committed. Supplier shall inform Progress Rail, with their payment request of any situation in which scheduled subcontractor payments have not been made and the reason therefore.
- (2) Supplier shall, upon request by Progress Rail, require each subcontractor to complete and forward to Progress Rail on a monthly basis a "Prompt Payment Report-Subcontractor's Report". The subcontractor shall certify that payment has been received.

C. Supplier shall have a continuing obligation to maintain a schedule for participation by DBE contractor(s) to meet its goal set forth in its agreement. Supplier shall not have work performed nor the materials or supplies furnished by any individual or firm not previously approved in writing by Progress Rail. If at any time, the Contractor believes or has reason to believe that it needs to obtain a substitute for an approved DBE contractor, Supplier shall promptly submit a request to Progress Rail in writing. Situations which may warrant substitution for a DBE firm include, but are not limited to the following:

- (1) Evidence of change in ownership or circumstances regarding the firm's status as a DBE.

- (2) Death or physical disability, if the named subcontractor or DBE partner of the joint venture is an individual.
- (3) Dissolution, if a corporation or partnership.
- (4) Bankruptcy of the subcontractor, subject to applicable bankruptcy law, and only instances where the bankruptcy affects the Contractor's ability to perform.
- (5) Inability to furnish a reasonable performance or payment bond, if required.
- (6) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (7) Failure or inability to comply with a requirement of law applicable to contractors and subcontractors on a construction, alteration or repair project.
- (8) Failure or refusal to execute the subcontract in accordance with the terms of an offer submitted to Supplier prior to the Supplier's submission of its bid, but only where Progress Rail can ascertain with reasonable certainty the terms of such offer. In the absence of any other factors, such a failure or refusal will be considered an unusual situation only if the bidder obtained, prior to bidding/proposing, an enforcement commitment from the subcontractor involved.
- (9) Failure to comply with the terms and conditions of the FTA TVM or US DOT contract or Supplier's agreement with Progress Rail.

Within 30 days thereafter, Supplier shall, if necessary to achieve the DBE goal, make every reasonable effort to subcontract the same or other work equivalent in value to other certified DBE firms. Supplier must have the prior written approval of Progress Rail before substitution for a DBE subcontractor, regardless of the reason for substitution.

- D. Supplier shall, upon request from Progress Rail, forward copies of all subcontracts to Progress Rail at the time of their execution.
- E. Supplier agrees to cooperate in any studies or surveys as may be conducted by Progress Rail which are necessary to determine the extent of Supplier's compliance with these Requirements. Additionally, upon request of the end customer, Progress Rail shall have the right to examine and audit all records sufficient to reflect properly all cost

incurred or anticipated to be incurred directly or indirectly in the performance of this contract.

- F. Supplier shall keep records and documents for at least three (3) years following performance of this Contract to indicate compliance with these requirements. These records and documents, or copies thereof, shall be made available at reasonable times and places for inspection by Progress Rail or the DOT and will be submitted upon request together with any other compliance information which Progress Rail or the DOT may require.
- G. Failure by Supplier to carry out these Requirements is a material breach of any contract subject to these Requirements, which may result in the termination of such contract under the Default provision or such other remedy as Progress Rail deems appropriate.
- H. Supplier shall make good faith efforts with respect to a procurement with a DBE goal. Supplier can demonstrate it has done so either by meeting the contract goal or documenting good faith efforts. Examples of components that may constitute good faith efforts are found in Appendix A to 49 CFR Part 26.
- I. Supplier will count expenditures to a DBE toward DBE goals only if the DBE is performing a commercially useful function on the applicable contract, as described below in subsections 1-3 and otherwise as specified in 49 CFR Part 26, Section 26.55 (a) through (h).
 - (1) 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. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must 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.
 - (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 to obtain the appearance of DBE participation. In determining whether

a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

- (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, you must presume that it is not performing a commercially useful function.

J. Notwithstanding anything hereunder or in any agreement subject to these Supplier DBE Requirements, Supplier shall immediately notify Progress Rail in the event:

- (1) any of the above representations change; or
- (2) Supplier suspects any DBE or Non-DBE entity it engages for the work of carrying out any contractual obligations to Progress Rail.

We Support Supplier Diversity