



ADDENDUM NO. 3

## **EXHIBIT 11**

**DISADVANTAGED BUSINESS ENTERPRISE, EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION PROVISIONS FOR THE LOUISIANA DEPARTMENT OF NATURAL RESOURCES CONSTRUCTION MANAGER AT RISK CONTRACTS (“OWNER’S DBE PROGRAM” - CMAR DBE PROVISIONS)**

## **REQUEST FOR QUALIFICATIONS**

**PART A: PRE-SITE RESTORATION SERVICES and**

**PART B: SITE RESTORATION SERVICES (Construction Management at Risk)**

**Orphaned Well Site Remediation and Restoration Management – Monroe District with Option for Federal Well Sites in Monroe and Lafayette Districts**

Project No. 431-PA23-001

September 2, 2022

**DISADVANTAGED BUSINESS ENTERPRISE, EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION  
PROVISIONS FOR THE LOUISIANA DEPARTMENT OF NATURAL RESOURCES  
CONSTRUCTION MANAGER AT RISK CONTRACTS (“CMAR DBE PROVISIONS”)**

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## **I. SCOPE AND APPLICABILITY**

1. The Louisiana Department of Natural Resources (hereinafter “LDNR” or “Owner”) is dedicated to providing equal employment and affirmative action opportunities for all Construction Managers and subcontractors, and their employees, who participate in the plugging and abating of abandoned oil wells. These Disadvantaged Business Enterprise (“DBE”), Equal Employment, and Affirmative Action Provisions for LDNR Construction Manager at Risk Contracts (hereinafter “DBE Provisions”) evidence that dedication by setting forth specific participation goals for DBEs and for minority and female participation in the construction work required to implement the LDNR’s program.
2. These DBE Provisions apply to ALL Construction Management at Risk (CMAR) Contracts, let by the LDNR, without regard to dollar amount, and to all subcontracts and lower-tier subcontracts in excess of \$50,000.00, let pursuant to those LDNR general construction contracts. All Construction Managers shall require their Sub-Consultants and Subcontractors, including lower-tier Subcontractors, with subcontracts in excess of \$50,000.00, to include these or identical provisions in their subcontracts, and require compliance therewith. Failure of any Construction Manager, Subcontractor and/or lower tier Subcontractor, as applicable, to comply with the provisions set forth herein shall subject such Construction Manager, Subcontractor, and/or lower tier Subcontractor, as applicable, to the penalties set forth in Article IV herein below entitled “Owner Enforcement.”
3. These DBE Provisions also satisfy the requirements of federal Executive Order 11246, which apply to “all [C]Contractors and [S] Subcontractors which hold any Federal or federally assisted construction contract in excess of \$10,000.[00].” [41 C.F.R. § 60-4.1.] The references at the end of certain articles herein are to the provisions contained in the Code of Federal Regulations implementing Executive Order 11246. The references within certain articles herein to “Executive Order” are to Executive Order 11246. The LDNR follows and applies the minority and female participation goals applicable to federally assisted construction projects, as set forth in Article III.3.B. herein below. Failure of any Construction Manager, Subcontractor and/or lower tier Subcontractor, as applicable, to adhere to the provisions set forth herein shall subject such Construction Manager, Subcontractor, and/or lower tier Subcontractor to the compliance, enforcement and penalty provisions imposed by the Office of Federal Contract Compliance, as required by the federal regulations implementing Executive Order 11246, as set forth throughout the provisions herein below. Importantly, the LDNR applies these DBE Provisions to ALL of its general construction contracts, and not just those in excess of \$50,000.00, as well as to all of its subcontracts and lower-tier subcontracts in excess of \$50,000.00. All Construction Managers and Subcontractors, including lower-tier Subcontractors engaged to work on LDNR construction projects are hereby put on notice of the scope of these provisions by this Article I.

4. These DBE Provisions are subject to BOTH the compliance, enforcement and penalty provisions imposed by the Office of Federal Contract Compliance, as required by the federal regulations implementing Executive Order 11246, AND the Owner Enforcement provisions set forth in Article IV herein below.

## II. DISADVANTAGED BUSINESS ENTERPRISES (“DBE”)

### 1. DBE DEFINITION AND CERTIFICATION

- A. A Disadvantaged Business Enterprise (“DBE”) is a for-profit small business concern
  - (1) 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
  - (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- B. The LDNR does not conduct an independent DBE certification process. In order to qualify as a DBE for the LDNR, a business must be certified as a DBE by the Louisiana Unified Certification Program (LAUCP) OR certified as a disadvantaged business entity under the Federal 8A program.
  - (1) A business that is currently certified as DBE under the Louisiana Unified Certification Program, and remains certified during the existence of this Contract, shall be DBE for purposes of this Contract.
  - (2) A business that is currently certified as State and Local DBE (SLDBE) under the City of New Orleans, New Orleans Aviation Board, or Sewerage & Water Board of New Orleans, and remains certified during the existence of this Contract, shall be DBE for purposes of this Contract.

### 2. DBE PARTICIPATION GOALS

- A. **The Owner’s goal for DBE participation on this Contract shall be 36.2%, inclusive of changes in the Contract sum.**
- B. Construction Manager shall use good faith efforts to meet the Owner’s goal for DBE participation, set forth in Article II.2.A. herein above, in the performance of this Contract.
- C. Construction Manager shall be deemed to be in compliance with the requirements of this Article II regarding DBE if:
  - (1) Construction Manager meets the DBE participation goal set forth in Article II.2.A. herein above, or
  - (2) Should Construction Manager be unable to meet the DBE participation goal, Construction Manager demonstrates that it has made good faith efforts, as defined in Article II.3. herein below.

### 3. DBE GOOD FAITH EFFORTS

- A. As used in this Article II entitled “Disadvantaged Business Enterprises,” “good faith efforts” mean efforts to achieve a participation goal or other requirement of the provisions set forth in this Article II regarding DBE, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the goal or requirement.
- B. The following is a list of types of actions that may be considered in determining whether Construction Manager has made good faith efforts to meet the participation goals of the DBE requirements set forth in this Article II. This list is illustrative, and is neither exclusive nor exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
- (1) Soliciting through all reasonable means and available means (e.g. ensuring the inclusion of DBEs on recipient mailing lists for bidders, attendance at pre-bid meetings, advertising, written notices, and/or provision of information in languages other than English, where appropriate) the interest of all certified DBEs who have the capability to perform the work of the contract. The Construction Manager should solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Construction Manager should 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 goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Construction Manager might otherwise prefer to perform these work items with its own force.
  - (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. The Construction Manager should make a portion of the work available to DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, physical business addresses, electronic-mail addresses 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.
    - (a) The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Construction Manager’s failure to meet the contract DBE goal, as long as such costs are reasonable.

- (b) The ability or desire of a Construction Manager to perform the work of the Contract with its own organization does not relieve the Construction Manager of the responsibility to make good faith efforts. Construction Managers 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 and capacity. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (e.g., union v. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Construction Manager's efforts to meet the project goal.
- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by Owner or Construction Manager.
- (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 small business community specifications, and delivery schedules in ways that facilitate participation by DBEs
- (9) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs

### III. EQUAL EMPLOYMENT AND AFFIRMATIVE ACTION REQUIREMENTS

#### 1. EQUAL EMPLOYMENT OPPORTUNITY ("EEO") (Equal Opportunity Clause)

All references to the "Contractor" in Article III shall be interpreted as the "Construction Manager". During the performance of this Contract, the "Contractor" ("Construction Manager") agrees as follows:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.  
[41 C.F.R. §60-1.4(b)(1)]
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.  
[41 C.F.R. §60-1.4(b)(2)]

- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.  
[41 C.F.R. §60-1.4(b)(3)]
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.  
[41 C.F.R. §60-1.4(b)(4)]
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the LDNR, the LDNR's Program Manager, the administering agencies of the federal funds, and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.  
[41 C.F.R. §60-1.4(b)(5)]
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, by the LDNR, or as otherwise provided by law.  
[41 C.F.R. §60-1.4(b)(6)]
- G. The Contractor will include this Equal Employment Opportunity Clause, located at 41 C.F.R. §60-1.4(b), and reprinted herein in this Article III.1., in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interest of the United States.  
[41 C.F.R. §60-1.4(b)(7)]

**2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS**

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;  
[41 C.F.R. §60-4.3(1)(a)]
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;  
[41 C.F.R. §60-4.3(1)(b)]
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.  
[41 C.F.R. §60-4.3(1)(c)]
- (4) "Minority" includes:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);  
[41 C.F.R. §60-4.3(1)(d)(i)]
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);  
[41 C.F.R. §60-4.3(1)(d)(ii)]
  - (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and  
[41 C.F.R. §60-4.3(1)(d)(iii)]
  - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).  
[41 C.F.R. §60-4.3(1)(d)(iv)]

B. Whenever the Contractor, or any Subcontractor, at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000.00 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted, and herein below in Article III.3.B.  
[41 C.F.R. §60-4.3(2)]

C. If the Contractor is participating (pursuant to 41 C.F.R. §60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or



through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

[41 C.F.R. §60-4.3(3)]

- D. The Contractor shall implement the specific affirmative action standards provided herein below in Articles III.G.1. through III.G.16. of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographical area where the Work is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

[41 C.F.R. §60-4.3(4)]

- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

[41 C.F.R. §60-4.3(5)]

- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

[41 C.F.R. §60-4.3(6)]

- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor

shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

[41 C.F.R. §60-4.3(7)]

- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

[41 C.F.R. §60-4.3(7)(a)]

- (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

[41 C.F.R. §60-4.3(7)(b)]

- (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

[41 C.F.R. §60-4.3(7)(c)]

- (4) Provide immediate written notification to the Director and the Owner when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

[41 C.F.R. §60-4.3(7)(d)]

- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Article III.G.2. above.

[41 C.F.R. §60-4.3(7)(e)]

- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.  
[41 C.F.R. §60-4.3(7)(f)]
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.  
[41 C.F.R. §60-4.3(7)(g)]
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.  
[41 C.F.R. §60-4.3(7)(h)]
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.  
[41 C.F.R. §60-4.3(7)(i)]
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.  
[41 C.F.R. §60-4.3(7)(j)]

- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60-3.  
[41 C.F.R. §60-4.3(7)(k)]
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.  
[41 C.F.R. §60-4.3(7)(l)]
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.  
[41 C.F.R. §60-4.3(7)(m)]
- (14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.  
[41 C.F.R. §60-4.3(7)(n)]
- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitation to minority and female contractor associations and other business associations.  
[41 C.F.R. §60-4.3(7)(o)]
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.  
[41 C.F.R. §60-4.3(7)(p)]

H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (as set forth herein above in Articles III.G.1. through III.G.16.). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Articles III.G.1. through III.G.16. of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply,

however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

[41 C.F.R. §60-4.3(8)]

- I. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order and of these DBE Provisions if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order and of these DBE Provisions if a specific minority group of women is underutilized).  
[41 C.F.R. §60-4.3(9)]
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.  
[41 C.F.R. §60-4.3(10)]
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.  
[41 C.F.R. §60-4.3(11)]
- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.  
[41 C.F.R. §60-4.3(12)]
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Article III.G. herein above of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. 60-4.8, and the Owner shall proceed in accordance with Article IV, herein below, of these DBE Provisions.  
[41 C.F.R. §60-4.3(13)]
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number

where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

[41 C.F.R. §60-4.3(14)]

- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

[41 C.F.R. §60-4.3(15)]

**3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION, INCLUDING MINORITY AND FEMALE PARTICIPATION GOALS**

- A. The Offeror's, Bidder's, Contractor's and Subcontractors' attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein above in Articles III.1. and III.2.

[41 C.F.R. §60-4.2(d)(1)]

- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<b>Goals for minority participation:</b>	<b><u>29.3%</u><sup>1</sup></b>
<b>Goals for Female participation</b>	<b><u>6.9%</u><sup>2</sup></b>

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.

***The Contractor's compliance with the Executive Order, the regulations in 41 CFR Part 60-4 and these DBE Provisions shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3 (a) and its efforts to meet the goals.*** The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects.

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<sup>1</sup> This is the goal established for the State of Louisiana, by the United States Department of Labor, as published in the Technical Assistance Guide for Federal Construction Contractors, Office of Federal Contract Compliance Programs, U.S. Department of Labor (October 2019), Appendix P: Participation Goals for Minorities and Females, at p. 135.

<sup>2</sup> This is the goal established for the Nation, which applies to the State of Louisiana, by the United States Department of Labor, as published in the Technical Assistance Guide for Federal Construction Contractors, Office of Federal Contract Compliance Programs, U.S. Department of Labor (October 2019), Appendix P: Participation Goals for Minorities and Females, at p. 113.

The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.  
[41 C.F.R. §60-4.2(d)(2)]

- C. The Contractor shall provide written notification to the Owner and the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000.00 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.  
[41 C.F.R. §60-4.2(d)(3)]
  
- D. As used in this Notice, and in the Contract resulting from this solicitation, the "covered area(s)" is the State of Louisiana.  
[41 C.F.R. §60-4.2(d)(4)]

#### **4. CERTIFICATION OF NON-SEGREGATED FACILITIES**

Contractor shall ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex or national origin cannot result. The Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Contractor's control, where the facilities are segregated. This obligation extends to all Contracts containing the Equal Opportunity Clause regardless of the amount of the Contract. The term "facilities" as used in this section, means any waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms and wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities; Provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes. With respect to all subcontracts in excess of \$10,000.00, Contractor shall require the same of subcontractors, and shall include an identical provision in said subcontracts, and shall require subcontractors to require the same of all of their subcontractors who hold subcontracts in excess of \$10,000.00.

[41 C.F.R. §60-1.8]

#### **IV. OWNER ENFORCEMENT**

- A. Construction Manager shall be required to submit separate DBE documentation at the Request for Qualifications (RFQ) Phase, Pre-Construction Phase (i.e., at 60% and 90%

Design Completion), submission of the Guaranteed Maximum Price, Contract Buy-Out Phase, and the Construction Phase as set forth in this section, Article IV. Owner Enforcement.

B. Construction Manager shall submit the following during the Request for Qualifications (RFQ) Phase:

(1) Construction Manager shall provide the populated CMAR DBE Contracting Compliance Certification in the Statement of Qualifications (SOQ). It shall attest that they will comply with all Disadvantaged Business Enterprise, Equal Employment Opportunity, and Affirmative Action Provisions set forth in these DBE Provisions and with all of the provisions of Federal Executive Order 11246, as amended, including all implementing and related rules, regulations and relevant orders of the U.S. Secretary of Labor.

(2) Construction Manager shall provide a CMAR DBE Contracting Action Plan with the Statement of Qualifications (SOQ). It shall demonstrate the strategies and actions Construction Manager will utilize to achieve and maintain the DBE participation goal set forth by Article II above (35%).

(3) Construction Manager shall provide a CMAR Community Outreach Action Plan with the Statement of Qualifications (SOQ). It shall demonstrate the strategies and actions Construction Manager will utilize in establishing and maintaining a positive relationship with the community.

a. The CMAR Community Outreach Action Plan shall provide a strategy of how the Construction Manager plans to interact with the local community with regards to traffic management, debris management, and site aesthetics.

b. The CMAR Community Outreach Action Plan shall provide strategies of how the Construction Manager will identify and quantify project employment opportunities, communicate opportunities to community, and identify and recruit qualified applicants in the local community.

C. Construction Manager shall submit the following with during the Pre-Construction Phase, at 60% and 90% Design Completion:

(1) Construction Manager shall provide the populated CMAR DBE Pre-Construction Contracting Schedule – DBE Participation at 60%and 90% design completion. It shall identify all anticipated DBE entities forecasted to work on the project and anticipated DBE participation percentage.



- (2) Construction Manager shall provide the populated CMAR Pre-Construction DBE Good Faith Efforts Report at 60% and 90% Design Completion. It shall document Construction Manager's good faith efforts to meet the DBE Participation Goal set forth in Article II herein above.
- D. Construction Manager shall submit the following with the Guaranteed Maximum Price (GMP):
  - (1) Construction Manager shall provide the populated CMAR DBE Pre-Construction Contracting Schedule – DBE Participation with the Guaranteed Maximum Price (GMP). It shall identify all anticipated DBE entities that will work on the project and anticipated DBE participation percentage.
  - (2) Construction Manager shall provide the CMAR Pre-Construction DBE Good Faith Efforts Report with the Guaranteed Maximum Price (GMP). It shall document Construction Manager's good faith efforts to meet the DBE Participation Goal set forth in Article II herein above.
- E. Construction Manager shall submit the following during the Buy-Out Phase:
  - (1) Construction Manager shall submit **CMAR DBE Participation Acknowledgement** forms at the juncture of buy-out of each subcontract, purchase order, or service agreement executed with DBE firms for the project, whether during the Pre-Construction Phase or Construction Phase.
    - a. Construction Manager shall require all subcontractors, vendors, suppliers, and consultants to submit CMAR DBE Participation Acknowledgement forms to the Construction Manager at the juncture of buy-out of each subcontract, purchase order, or service agreement with DBE firms for the project, whether during the Pre-Construction Phase or Construction Phase.
  - (2) Construction Manager shall require all subcontractors and consultants to submit the populated CMAR Community Outreach Report at the juncture of buy-out of each subcontract or service agreement for the project. The reports shall identify and quantify project employment opportunities known at buy-out and anticipated for following month.
- F. Construction Manager shall submit the following during the Construction Phase:
  - (1) Construction Manager shall submit CMAR DBE Contracting Compliance Report (Report I) monthly and quarterly during the Construction Phase. This report shall identify all DBEs participating in the performance of the Contract, actual payments to DBEs, and actual aggregate participation achieved by Construction Manager and all subcontractors and consultants.

- a. Construction Manager shall submit the **CMAR DBE Contracting Compliance Report** (Report I) monthly in with the Monthly Application for Payment. Though not a requirement for payment, failure to provide set information may result in Non-Compliance.
- (2) Construction Manager shall submit **CMAR Community Employment Report** (Report II) monthly. It shall identify the new hires for report month and anticipated employment opportunities for following month. It shall also include narratives demonstrating actions and processes used to make new hires for the month and recruit for job openings in following month.
  - a. Construction Manager shall require all subcontractors, and consultants to submit CMAR Community Employment Reports (Report II) monthly.
  - b. Construction Manager shall submit the CMAR Community Employment Report (Report II) monthly in with the Monthly Application for Payment. Though not a requirement for payment, failure to provide set information may result in Non-Compliance.
- (3) Construction Manager shall submit the **CMAR Minority and Female Participation Report** (Report III). This report shall identify the actual Minority Participation Percentage and Female Participation Percentages achieved by the Construction Manager as of the end of the reporting month.
  - a. Construction Manager shall require all subcontractors and consultants to submit the CMAR Minority and Female Participation Reports (Report III) monthly.
  - b. Construction Manager shall submit the CMAR Minority and Female Participation Report (Report III) monthly in with the Monthly Application for Payment. Though not a requirement for payment, failure to provide set information may result in Non-Compliance
- G. Owner and/or Program Manager will monitor DBE percentages regularly according to the proposed DBE participation percentage submitted with the Guaranteed Maximum Price (GMP) and CMAR DBE Contracting Action Plan provided by the Proposer in the Statement of Qualifications.
- H. If the Construction Manager fails to meet proposed DBE participation percentage submitted with the GMP, or any proposed milestones percentages therein, the Construction Manager shall notify the Owner and/or Program Manager immediately thereafter and provide a remedy plan to the Owner and/or Program Manager within fourteen (14) days post the said notification.

- I. If the Construction Manager fails to retain any DBE subcontractors, vendors, suppliers, and/or consultants for the total amount of the proposed contract, purchase order, and/or agreement to perform work on the project, the Construction Manager must provide a strategy for reallocating these funds toward another DBE entity relative to the Schedule of Values.
  
- J. If a DBE company is not retained, Construction Manager shall provide notification within five (5) business days to the Owner and Program Manager after the DBE company halts work on the project. The Construction Manager shall indicate the reason for the stoppage of work including all material, labor, and equipment, and identify the steps taken to assist the DBE firm in fulfilling their contractual obligations initially set forth in the respective contract agreement. The Construction Manager shall provide the DBE Release Form monthly, as needed. Obtain current version of the DBE Release Form from the Owner.
  
- K. **Notice of Failure to Comply and Due Process:** Should Construction Manager and/or Subcontractor, as applicable, fail to comply with any of the requirements of these DBE Provisions, specifically including but not limited to compliance with the provisions governing DBE Participation Goals, Minority Participation Goals, and Female Participation Goals set forth in Articles II and III.3. B. herein above, the good faith efforts required to achieve same, and/or the specific Affirmative Action steps set forth in Article III.2.G. herein above, the Owner, either directly or through its Program Manager, shall give written Notice of Failure to Comply and to Show Cause Why Sanctions Should Not Be Imposed to the Construction Manager and/or Subcontractor, as further set forth herein below:
  - (1) Said written Notice shall identify the act(s) of noncompliance of which the Owner has knowledge. However, failure of the Owner or the Owner's Program Manager to identify any act(s) of noncompliance shall not constitute waiver by the Owner of any of its rights or remedies pursuant to these DBE Provisions, this Contract and/or to law.
  
  - (2) Said written Notice shall be delivered to the Construction Manager and/or Subcontractor an email and/or certified mail to the Construction Manager's and/or Subcontractor's Authorized Representative under the Contract and/or Subcontract.
  
  - (3) Construction Manager and/or Subcontractor shall have fifteen (15) days from the date of the written Notice described in Article IV.O.5. herein above to either:
    - (a) Cure the acts of noncompliance, and submit a signed written response to the Owner and the Owner's Program Manager attesting that the acts of noncompliance have been cured and the means by which they have been cured; **or**

- (b) Submit to the Owner and the Owner's Program Manager a signed written response containing a commitment to corrective action, as detailed further in Article IV.O.5. herein below; or
  - (c) Submit to the Owner and the Owner's Program Manager a signed written response presenting opposing facts and evidence.
- (4) The signed written response shall be signed by an authorized representative of the Construction Manager and/or Subcontractor.
- (5) If the signed written response is a commitment to corrective action, it shall specifically outline the steps it will implement to achieve compliance, and shall commit to achieve compliance with these DBE Provisions within thirty (30) days from the date of said response. The Owner may, but is not required to, grant one or more extensions of time of this deadline of fifteen (15) days each. If compliance is not achieved, the Owner shall have the right to proceed with the sanctions set forth in Article IV.P. herein below.
- (6) If the signed written response presents opposing facts and evidence, the Owner and/or the Owner's Program Manager shall schedule an informal hearing which shall be attended by the Owner's Program Manager and the Construction Manager's and/or Subcontractor's Authorized Representative under the Contract and/or Subcontract.
  - a. The Owner's Program Manager shall provide written notice of this informal hearing to the Construction Manager and/or Subcontractor no less than fourteen (14) days before the date of the informal hearing. Said written notice shall be delivered to the Construction Manager and/or Subcontractor by overnight delivery service, with proof of delivery retained by the Owner or Owner's Program Manager, with an email copy to the Construction Manager's and/or Subcontractor's Authorized Representative under the Contract and/or Subcontract.
  - b. The Owner may, at its discretion, also attend.
  - c. Within thirty (30) days following the date of this informal hearing, the Owner and/or the Owner's Program Manager shall provide a written decision setting forth a determination of "Compliance" or "Noncompliance" with these DBE Provisions, and brief reasons therefore.
  - d. In the event of a finding of noncompliance, the Owner shall have the right to proceed with the sanctions set forth in Article IV.P. herein below.

(7) If the written response to the Owner and the Owner’s Program Manager attested that the acts of noncompliance have been cured, but cure was not in fact achieved, the Owner shall have the right to proceed with the sanctions set forth in Article IV.P. herein below.

L. Should Construction Manager and/or Subcontractor(s), as applicable, fail to comply with the DBE Provisions set forth herein, and following exhaustion of the Notice of Failure to Comply and Due Process procedures set forth in Article IV.O., herein above, Owner may impose one or more of the following sanctions, as the Owner may deem appropriate.

(1) The suspension of any payment, or part thereof, which is due or becomes due under the Contract and/or Subcontract, until such time as the Construction Manager and/or Subcontractor is able to demonstrate compliance with these DBE Provisions.

(2) The imposition and recovery by the Owner from the Construction Manager, and/or Subcontractor of Liquidated Damages per calendar day for each day that Construction Manager and/or Subcontractor, as applicable, remain in noncompliance with these DBE Provisions are shown in the following table:

<b>CONSTRUCTION CONTRACT AMOUNT</b>	<b>DAILY LIQUIDATED DAMAGES</b>
Under \$100,000	\$500
\$100,000 to \$499,999	\$1,000
\$500,000 to \$999,999	\$1,500
\$1 Mil to \$4,999,999	\$2,000
\$5 Mil to \$15 Mil	\$2,500
Over \$15 Mil	\$3,000

(3) The termination of the Contract and/or Subcontract, in whole or in part.

(4) Subsequent to the termination of the Contract, as provided in the immediately preceding Article IV.P.3., the debarment of the Construction Manager and/or Subcontractor from entering into any future contracts awarded by the Owner, for a period of three years following the date of said termination.

M. The required reporting and enforcement provisions set forth in this Article IV are in addition to, and supplement, and do not replace, the reporting and enforcement provisions of Federal Executive Order 11246, as amended, including all implementing and related rules, regulations and relevant orders of the U.S. Secretary of Labor.