



Illinois Tollway **DIVERSITY**

Driving Economic Opportunities

BUILDING FOR SUCCESS

Goods and Services
Special Provisions
Compliance

May 01, 2023



HOUSEKEEPING RULES



Housekeeping Rules



WELCOME & INTRODUCTIONS

Goods and Services Special Provisions Compliance

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Illinois Tollway Compliance Department**

AGENDA

- I. **BEP/VET Programs**
- II. **BEP Recognition Partners**
- III. **Veteran Business Program**
- IV. **BEP Aspirational Goal**
- V. **BEP Utilization Plan**
- VI. **Joint Venture**
- VII. **Calculating BEP Venture Participation**
- VIII. **Commercially Useful Function**
- IX. **Good Faith Efforts**
- X. **Contract Compliance**
- XI. **Questions and Answer Session**



BEP/VBP Programs

Goal:

To promote and support the economic development of minority, female, and persons with disabilities – owned businesses, and their participation in the State's overall procurement process.

BEP (Valid for 7 years with Annual No Change Affidavit) :

BEP certifies 3 groups of people: **MBEs** (Minority-owned Businesses), **M/WBEs** (Women-Owned Businesses), and **PBEs** (Persons with Disabilities -owned Businesses).

- Nationwide
- Have at least 51% ownership by a minority, woman, or person with a disability
- Have at least 51% of the business controlled by one or more minority groups, women or PBE
- Owner must be a citizen of the United States or a legal permanent resident alien
- Company annual revenue is less than \$150 million dollars



BEP Recognition Partners

BEP Recognition Certifications (Not Reciprocal)

- Chicago Minority Supplier Development Council
- Mid-States Minority Supplier Development Council
- Women's Business Development Center
- Chicago Transit Authority (CTA)
- Illinois Department of Transportation (IDOT)
- Metra
- Pace

Special Note: Recognition certification is valid for one year.



Veteran Business Program

VBP:

VBP (Veteran Business Program): Co-managed by BEP and the Illinois Department of Veteran Affairs (Valid for 5 years with Annual No Change Affidavit).

- Illinois Statewide
- Applicant(s) must have valid DD214
- At least 51% owned by one or more qualified service-disabled veteran or veterans living in Illinois
- Company must be headquartered in Illinois
- Company annual revenue is less than \$75 million dollars

Recognition Certification

- Cook County (Veteran/Services – Disabled Veteran Business Enterprise
- United States Department of Veteran Affairs – Center for Verification and Evaluation (CVE)
VOSB/SDVOSB



BEP Aspirational Goal

The BEP statewide aspirational goal is 30%.

The breakdown of spend to minority owned businesses, women owned businesses, and businesses owned by persons with disabilities are 16%, 10% and 4%, respectively.

It is important that each state agency strive to meet the aspirational goal each year.

STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN

Special Note: Once there is a goal, there is a U-Plan. It is the roadmap for meeting the goal.

All Solicitations includes Business Enterprise Program (BEP) participation goals and, therefore, requires bidders and offerors to include a Utilization Plan.




BEP Utilization Plan

A “Utilization Plan” includes:

- **Part 1: Commitment and Signature;**
- **Part 2: Participation Agreement (Letter of Intent);**
- **Part 3: Good Faith Efforts to achieve goal and Request for Waiver;**
- **Part 4: Terms of Utilization.**

State of Illinois
Department of Central Management Services



State of Illinois Business Enterprise Program for
Minorities, Women, and Persons with Disabilities

Utilization Plan

BEP Utilization Plan

STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM
UTILIZATION PLAN

Version 20.0

UTILIZATION PLAN PART I: COMMITMENT AND SIGNATURE

The undersigned Vendor submits this Utilization Plan as part of its bid or offer in accordance with the requirements of solicitation # _____ and the requirements of the Business Enterprise Program (BEP). The solicitation contains a goal that _____% of the value of the contract will be performed by BEP certified vendors as defined by the Department of Central Management Services (CMS).

The Utilization Plan consists of the following parts, each of which must be completed and returned as instructed in this Commitment. No alterations of these forms will be permitted:

- Part I: Vendor Commitment (with Signature)
- Part II: Subcontractor Participation Agreement(s)
- Part III: Good Faith Effort (Checklist, Contact Log, and Documentation)
- Part IV: Utilization Plan Terms and Conditions (These terms and conditions apply to all options below but do not need to be returned).

The undersigned Vendor acknowledges that (1) Vendor has read, understands, and agrees to BEP policies, rules, and procedures as defined in the Terms and Conditions in Part IV of this document, and (2) Vendor hereby affirms (**select one** of the options below):

- ☐ Vendor is a BEP certified firm and plans to fully meet the goal through self-performance. (Return this Part I Signature Page only.)
- ☐ Vendor has identified BEP certified subcontractor(s) to fully meet the established goal. (Return this Part I Signature page and signed Part II Subcontractor Participation Agreement(s) to equal or exceed the goal.)
- ☐ Vendor cannot fully meet the goal but has made Good Faith Effort towards meeting the goal, and hereby requests a waiver or reduction of the goal to _____% based on the completed Good Faith Effort. (If requesting a waiver, return this Part I Signature Page and completed Part III Good Faith Effort. If requesting a reduction, return this Part I Signature Page, Part II signed Subcontractor Participation Agreement(s), and completed Part III Good Faith Effort.)

The undersigned Vendor understands that all subcontractors identified in this Utilization Plan and Participation Agreement(s) must be certified with the Illinois Department of Central Management Services (CMS) BEP at the time of submission of all bids/offers and shall perform commercially useful functions as defined in Part IV of this Utilization Plan. **We understand that compliance with this Utilization Plan is a mandated part of this solicitation and that this Utilization Plan will become a part of the contract, if awarded.** Failure to carry out the requirements of this Utilization Plan is a material breach of the resulting contract, which may result in the termination of the contract or such other remedy as the Agency/University deems appropriate.

STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM
UTILIZATION PLAN

Version 20.0

UTILIZATION PLAN PART II: PARTICIPATION AGREEMENT (Letter of Intent)

Instructions: The Prime Vendor is required to submit a separate, signed and **fully completed Participation Agreement** from each Business Enterprise Program (BEP) certified vendor or Veteran Small Business certified vendor (VSB). **Once signed and submitted with the bid/offer, this Participation Agreement, along with the other Parts of this Utilization Plan, will become a mandated part of the contract, if awarded.** The Prime Vendor shall not prohibit or otherwise limit the BEP/VSB certified vendor(s) from providing subcontractor quotes to other potential bidders/offerors.

Project Name: _____ Project/Solicitation Number: _____

Name of Prime Vendor: _____
Address: _____
City, State and Zip: _____
Telephone: _____ Fax: _____ Email: _____

Vendor's Contact responsible for compliance with this Participation Agreement:

Name of BEP/VSB Certified Vendor: _____
Type of Certified Vendor: ☐ BEP ☐ VSB
Address: _____
City, State and Zip: _____
Telephone: _____ Fax: _____ Email: _____

BEP/VSB Vendor's Contact responsible for compliance with this Participation Agreement:

Type of Agreement: ☐ Services ☐ Supplies ☐ Both Services and Supplies

(a) Proposed % of Contract to be performed by the BEP/VSB Certified Vendor _____%
NOTE: The Prime Vendor must indicate the percentage of the estimated contract award that will be subcontracted to the certified BEP/VSB Vendor.

(b) Anticipated start date of the Certified BEP/VSB Vendor: _____.

(c) This participation agreement shall have a term of _____ to _____, with a total period of _____ years and _____ months, including renewals, change orders or extensions to the underlying contract.

(d) Description of work to be performed or goods/equipment to be provided by the BEP certified vendor. **This description must include identified Institute for Public Procurement (INIGP)**

STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM
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UTILIZATION PLAN PART III: DEMONSTRATION OF GOOD FAITH EFFORTS TO
ACHIEVE GOAL AND REQUEST FOR WAIVER

If the BEP/VSB participation goal will not be achieved in whole or part, the Good Faith Efforts Procedures outlined in Parts III and IV of this document will be used to evaluate submitted Utilization Plans. A Vendor providing Good Faith Effort documentation and a request for waiver must complete and submit Part III of this Utilization Plan in its entirety in addition to its bid/offer. Failure to submit the Good Faith Effort Contact Log, checklist, and supporting documentation in its entirety shall render Vendor's bid or offer non-responsive and cause it to be rejected.

Below is a checklist of actions that will be used to evaluate a Vendor's Demonstration of Good Faith Efforts and Request for Waiver. **Please check the actions which you have completed.** If any of the following actions are not completed, please attach a detailed written explanation indicating why such action was not completed. If any other efforts were made to obtain BEP certified vendor participation, in addition to the items listed below, attach a detailed description of such efforts.

☐ Utilize the website: <https://cms.diversitycompliance.com> to identify BEP certified vendors within the respective NIGP code(s) on the solicitation documents. At a minimum, email all listed vendors with project specifications sufficient to build a quote, then solicit quotes from all vendors who express an interest with follow-up emails and telephone calls. Documentation of these efforts must be submitted as evidence, including copies of all e-mails sent.

☐ Solicit through all reasonable and available means (e.g., attendance at a vendor conference, advertising, written notices) the interest of BEP certified vendors that have the capability to perform the work of the contract. Vendor must solicit this interest with sufficient advance time to allow the BEP certified vendors to respond to the solicitation. Vendor must determine with certainty if the BEP certified vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid or proposal, providing them with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation.

☐ Select portions of the work to be performed by BEP certified vendors to increase the likelihood that the goal will be achieved. This includes, where appropriate, unbundling contract work items into economically feasible units to facilitate BEP certified vendor participation, even when Vendor might otherwise prefer to perform these work items with its own forces.

BEP Utilization Plan cont'd

Version 20.0

STATE OF ILLINOIS BUSINESS ENTERPRISE PROGRAM UTILIZATION PLAN

UTILITATION PLAN PART IV: TERMS OF UTILIZATION

Definitions:

"Agency" shall be defined as any State Agency, Board, or Commission under the jurisdiction of the Governor of the State of Illinois.

"University" shall be defined as any public institution of higher education, meaning the University of Illinois, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, the public community colleges of the State, and any other public universities, colleges, and community colleges now or hereafter established or authorized by the General Assembly

"Certification" means a determination made by the Council or by one delegated authority from the Council to make certifications, or by a State agency with statutory authority to make such a certification, that a business entity is a business owned by a minority, woman, or person with a disability for whatever purpose. A business owned and controlled by women shall be certified as a "woman owned business". A business owned and controlled by women who are also minorities shall be certified as both a "woman owned business" and a "minority owned business".

"Commercially Useful Function" is defined as detailed in Section IV: Terms of Utilization, 5.5 and in accordance with 49 CFR 26.55(c).

"Contractor" means any person or business entity that has entered into a contract with a State Agency/University.

"Control" means the exclusive or ultimate and sole control of the business including, but not limited to, capital investment and all other financial matters, property, acquisitions, contract negotiations, legal matters, officer-director-employee selection and comprehensive hiring, operating responsibilities, cost-control matters, income and dividend matters, financial transactions and rights of other shareholders or joint partners. Control shall be real, substantial and continuing, not pro forma. Control shall include the power to direct or cause the direction of the management and policies of the business and to make the day-to-day as well as major decisions in matters of policy, management and operations. Control shall be exemplified by possessing the requisite knowledge and expertise to run the particular business and control shall not include simple majority or absentee ownership.

"Council" means the Business Enterprise Council for Minorities, Women and Persons with Disabilities.

"Woman" shall mean a person who is a citizen or lawful permanent resident of the United States and who is of the female gender.

"Woman-owned business" or "WBE" means a business which is at least 51% owned by one or more women, or, in the case of a corporation, at least 51% of the stock in which is owned by one or more women, and the management and daily business operations of which are controlled by one or more



BEP Utilization Plan cont'd

This Utilization Plan must demonstrate that the prime Vendor has either:

- (1) Met the entire contract goal;**
- (2) Requested a full waiver and made Good Faith Efforts towards meeting the entire goal;**
- (3) Requested a goal reduction and made Good Faith Efforts towards meeting a portion of the goal. Submission of Good Faith Effort log and appropriate documentation by Vendor shall be considered as a request for a full or partial goal waiver.**



Joint Venture

For a Utilization Plan to be considered, at the time of bid or offer, the submitting prime BEP vendor, if self-performing, or non-BEP submitting prime Vendor's proposed BEP subcontractor(s), must be certified with the Illinois Department of Central Management Services (CMS) as a BEP certified vendor.

Joint Venture:

Where there is a joint venture between a certified and non-certified vendor, the Utilization Plan must include an executed Joint Venture Agreement specifying the terms and conditions of the relationship between the parties and their rights and responsibilities to the prospective contract. Each party to the Joint Venture Agreement must execute the bid or offer prior to submission of the bid or offer to the Agency/University.



Calculating BEP Vendor Participation

Calculating BEP Certified Vendor Participation

- **Only the value of payments made for services performed and/or actual supplies/goods/equipment provided by BEP certified vendors is counted toward the contract goal.**
- **Work performed by non-BEP certified parties shall not be counted toward the goal, including work that a BEP certified vendor subcontracts to non-BEP certified vendors.**



Commercially Useful Function

Commercially Useful Function (CUF)

- A Vendor shall count towards the goal only expenditures to BEP firms that perform a commercially useful function constituting direct participation in the work of the contract.
- A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The BEP certified vendor must also be responsible, with respect to materials or supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials or supplies, and installing the materials (where applicable) and paying for the materials or supplies. **Remember the CUF has to be according to the SCOPE**



Good Faith Efforts

Good Faith Efforts

- **Prime Vendors must submit in their bid a Utilization Plan and Participation Agreement(s) that meet or exceed the published goal. If a Prime Vendor cannot meet the stated goal, it must fill out and attach Part III of this document, explaining the Good Faith Efforts it undertook to meet the goal, including contacting all certified BEP vendors that fall under the scope of work/NIGP codes. Utilization Plans and attached documentation are due at the time of bid or offer submission. The Business Enterprise Council (“Council”) or its delegate will consider the quality, quantity, and intensity of the Vendor’s efforts. The Utilization Plan contains a checklist of actions that the Council or its delegate will consider as evidence of Vendor's Good Faith Efforts to meet the goal. Documentation that alters or replaces the Utilization Plan and/or Participation Agreement(s), other than supplemental documentation, will not be considered during the Utilization Plan review**



Contract Compliance

Contract Compliance

- **This involves Vendor's compliance with the contractual obligations established by the Utilization Plan and Participation Agreement(s). After approval of the Utilization Plan and Participation Agreement(s) as well as the award of the contract, the Utilization Plan, including all applicable Parts, becomes part of the contract. If a Prime Vendor did not succeed in obtaining BEP certified vendor participation equal to or exceeding the goal, and the Utilization Plan was approved and contract awarded based upon a determination of Good Faith Effort, the total dollar value of BEP certified vendor work in the approved Utilization Plan, calculated as a percentage of the total awarded contract value, shall become the final contract goal.**





QUESTION & ANSWER SESSION

DIVERSITY AND STRATEGIC DEVELOPMENT

Programs

- Business assistance
- Mentoring and training
- Construction industry training and hiring opportunities

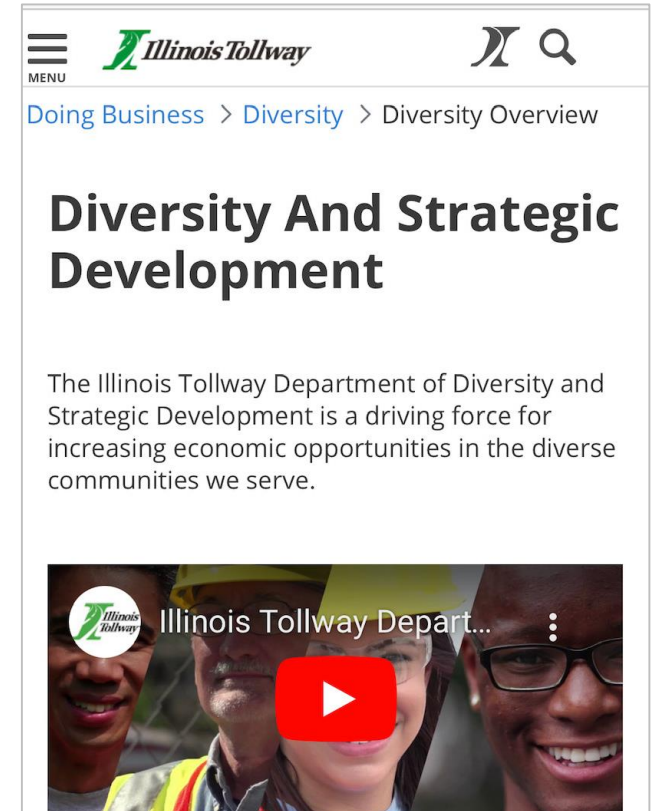
Initiatives

- Virtual outreach sessions
- Training webinars
- Contracting opportunity emails

Register for Tollway Diversity alerts!

- lperez@getipass.com

Visit illinoistollway.com to get started





THANK YOU