

Illinois State Toll Highway Authority

SPECIAL PROVISION FOR SMALL BUSINESS INITIATIVE

1. POLICY STATEMENT

It is the policy of The Illinois State Toll Highway Authority (“ISTHA” or “Tollway”) that qualified Illinois Small Businesses (“SBs”), as defined herein, have maximum feasible opportunities to participate fully in the performance of contracts funded and administered by the Tollway. The Tollway seeks to (i) ensure non-discrimination in the award and administration of its contracts and associated subcontracts, (ii) ensure it is not a passive participant in a discriminatory marketplace, (iii) create a level playing field on which Illinois based SBs can compete fairly for its contracts, (iv) ensure that any and all firms permitted to participate as SBs meet the eligibility standards of the Small Business Initiative applicable to prime or subcontractors, and (v) help remove barriers to the participation of SBs in Tollway contracts and associated subcontracts.

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

2. DEFINITIONS

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

Affiliate: Concerns and related entities are affiliates of each other when one directly or indirectly controls or has the power to control the other, or when a third party or parties’ controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists. In determining whether concerns and related entities are independently owned and operated and whether affiliation exists, the CPO will consider the totality of the circumstances and all appropriate factors, including use of common facilities, common ownership and management, identity of interest (substantially identical business or economic interests such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) and contractual arrangements. The CPO may find affiliation even if no single factor is sufficient to constitute affiliation. A franchise relationship shall not affect the determination of affiliate status if the franchise has the right to profit commensurate with ownership and bears the risk of loss or failure.

Bid Bond means a written guaranty, issued by an insurance company or a bank, guaranteeing the bidder will honor the terms of the bid. Bid Bond requirements shall be listed within each solicitation. The amount of the bond is variable and at the discretion of the Tollway.

Commercially Useful Function means a distinct element of contract work a contractor is responsible for executing, by actually performing, managing, and supervising the work or fulfilling responsibilities for such work as a Small Business Joint Venture or Teaming Agreement partner.

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

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

Direct Allowance Items means cost items that may include mobilization, contractor quality plan, and other items as directed on the Tollway website's [Direct Allowable Cost Document](#). Direct Allowance Items are allowable when requested by the Tollway and included in the contract. The costs are allowable when it is customary for the firm to bill for the cost, and it can be itemized in the firm's billing and accounting systems.

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

Diversity Goals refers to various goal programs administered by the Tollway which may be applied to contracts within the Small Business Initiative.

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

Manufacturer means a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by these specifications.

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

Performance Bond means a surety bond, issued by an insurance company or a bank, guaranteeing a contractor's completion of a project to the Tollway's satisfaction. Performance Bond requirements shall be listed within each solicitation. The amount of the bond is variable and at the discretion of the Tollway.

Regular Dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a Regular Dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of a Regular Dealer's distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis. Packers, manufacturer representatives, or other persons who arrange or expedite transactions are not Regular Dealers.

Rolling Owner Controlled Insurance Program ("ROCIP") means an insurance program managed and controlled by the Tollway that provides insurance coverage for specific construction projects. Requirements regarding enrollment in the ROCIP will be listed within each solicitation and is at the discretion of the Tollway.

Small Business ("SB") means an Illinois business currently registered by the State of Illinois Chief Procurement Office/General Services pursuant to the Small Business Set-Aside Program ("SBSA"). An SB is considered to

have current registration if the firm is listed in the SBSP directory database at time of bid. The link to the directory is found at:

<https://ipg.illinois.gov/>

Click the Vendor Directory then search by Reference/Small Business Set-Aside Program Registered drop-down and mark "YES".

Small Business Exception ("SBE") means an exception given to a small business prime contractor or a Small Business Joint Venture or Teaming Agreement, as defined in this Special Provision, on a Small Business Initiative contract that allows for subcontracting with firms who are not registered in the Tollway's Small Business Initiative program. Eligibility for a SBE will be determined by the Tollway's Department of Diversity and Strategic Development.

Small Business Joint Venture mean an association of two or more SBI firms proposing to perform as a prime contractor, in which each partner contributes property, capital, efforts, skill and knowledge, is responsible for a distinct, clearly defined portion of the work of the project and has a proportional share in the capital contribution, control, management, risks, and profits of the Small Business Joint Venture or Teaming Agreement, as described in a written agreement that specifies the terms and conditions of the relationship between the partners and each partners' risks and responsibilities and identifies the lead partner, if any. The combined gross revenue for any Small Business Joint Venture or Teaming Agreement cannot exceed the State's \$14 million annual gross revenue threshold for a Small Business Initiative Vendor.

Small Business Initiative ("SBI") means a Tollway program in which an Illinois business (whether a *Small Business Initiative Vendor*. may participate only if it is registered in the Tollway's SBI program. A business must be registered in the Tollway's SBI program within 5 days of notification of apparent low bidder status. The link to the Tollway's registration information is found at:

<https://iltollway.diversitysoftware.com>

Small Business Subcontractor Plan means a list (which all bidders are required to submit) of all subcontractors to be utilized on the contract.

Supplier means any person or entity providing supplies, including, but not limited to, equipment, materials, printing and insurance, or any person or entity that finances the purchase of supplies that can be procured regularly or are available on the commercial market.

Supplies means all personal property, including but not limited to equipment, materials, printing, and insurance.

Utilization Plan means a list (which all bidders are required to submit) of all subcontractors to be utilized and, where applicable, those identified to satisfy the goals outlined below.

Disadvantaged Business Enterprise Utilization Plan ("DBE Utilization Plan") means the list of currently certified DBEs that the Bidder commits will be utilized, including its own participation as a DBE, if applicable, in the scopes of work and the dollar values or the percentages of work to be performed pursuant to a solicitation and in conformance with this Special Provision. This utilization plan applies to Tiers 2 and 3 of the SBI.

Veteran Utilization Plan ("VET Utilization Plan") means the list of currently certified veteran-owned and/or

service- disabled veteran-owned small businesses (“VOSB/SDVOSB”) that the Bidder commits will be utilized, including its own participation as a VOSB/SDVOSB, if applicable, in the scopes of work and the dollar values or the percentages of work to be performed pursuant to a solicitation and in conformance with this Special Provision. This utilization plan applies to Tiers 2 and 3 of the SBI.

Veteran Owned Small Business/Service-Disabled Veteran Small Business means a business currently certified by the Illinois Commission on Equity and Inclusion as a VOSB/SDVOSB. A VBP is considered to have current certification if the firm is listed in the directory database of the pertinent certifying agency at time of bid.

3. CONTRACTOR ASSURANCE

The contractor makes the following assurance and agrees to include the assurance in each subcontract the contractor signs with a subcontractor. The contractor shall not discriminate on the basis of any protected class identified by law in the performance of this contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Tollway deems appropriate.

4. VENDOR LOCATOR REFERENCES

Bidders should consult the Illinois Tollway and Illinois Procurement Gateway (“IPG”) Small Business Directory and Tollway SBI Directory as a reference source for SBI Vendors. The links to the directories are set forth below:

<https://ipg.illinois.gov/>
<https://iltollway.diversitysoftware.com>

These directories will be used only as a source to identify registered SBI Vendors that may potentially participate in this contract. Registration does not mean that a firm is in any way prequalified to provide the products and/or services in its registration specialty. “Registration” means that (i) the Illinois Chief Procurement Office has determined, on the basis of information provided and the representations therein, that a business meets the requirements to be registered as a Small Business under the Illinois Procurement Code. The Illinois Chief Procurement Office, as a result of listing, does not make any representation concerning the ability of any listed firm to perform work in the specialty listed. The Illinois Tollway does not, through its use of or referral to the IPG, make any representation concerning the ability of any listed firm to perform work in its registered specialty. Bidders must conduct their own due diligence regarding the capabilities of registered firms to perform contract work.

5. VENDOR RULES AND ELIGIBILITY CRITERIA FOR SMALL BUSINESS INITIATIVE

Procurement in construction-related work may be reserved for qualified Illinois businesses in the SBI subject to the limitations listed below.

- 5.1. An Illinois business may participate in the SBI as a prime contractor only if it is registered as a Small Business by the State of Illinois Chief Procurement Office/General Services and listed in the SBSP directory database at the time of bid opening in accordance with Title 44 Ill. Admin. Code 1.4545(b):

The CPO-GS may develop his or her own list or may use a list maintained by another State agency, of vendors that meet the criteria of small business. Vendors desiring to submit bids or proposals or to otherwise contract for items set aside for small businesses shall submit information as specified verifying that the vendor qualifies as a small business under this Part. A business that fits the definition of small on the day of bid, offer, or proposal opening will be considered small at the time of award and may have the resulting contract and any renewals, even if the business no longer qualifies as a small business. When utilizing vendor lists for soliciting small business vendors, all

vendors shall be solicited under the commodity codes representing the supplies or services being solicited.

Prime contractors on SBI program contracts must be registered in the Tollway's SBI within 5 days of notification of apparent low bidder status.

- 5.2. Each firm bidding as part of a Small Business Joint Venture, as defined in this Special Provision, must also be registered in the Tollway's SBI within 5 days of notification of apparent low bidder status. To register as a Small Business Joint Venture firms must complete the pre-assessment form located on the Illinois Tollway website. Once the pre-assessment form has been received and reviewed, a username and password will be sent in order for the firm to complete the registration application in the Diversity Program System.
- 5.3. Primes shall only utilize SBI Vendors as subcontractors. Any subcontractors identified at the time of bid that are not already registered with the SBI will have 5 calendar days to become registered. Primes are not required to utilize SBI Vendors as suppliers. No wholesale business will be considered an SBI for purposes of the SBI if its annual sales for its most recently completed fiscal year exceed \$13,000,000.
- 5.4. No retail business or business selling services will be considered an SBI for purposes of the SBI if its annual sales and receipts exceed \$8,000,000.
- 5.5. No Illinois manufacturing business will be considered an SBI for purposes of the SBI if it employs more than 250 persons.
- 5.6. No Illinois construction business will be considered an SBI- for purposes of the SBI if its annual sales and receipts for its most recently completed fiscal year exceed \$14,000,000.
- 5.7. If a business is any combination of retailer, wholesaler, or construction business, only the annual sales for which the business is applying may not exceed the higher of the category thresholds shown above. See 5.3, 5.4 and 5.5. For example, a business that is both a retailer and in construction that applies to register as an SBI- Vendor for construction may not have annual construction sales and receipts, for its most recently completed fiscal year, in excess of \$14,000,000 for an SBI- Vendor. The retail category annual sales and receipts, not being applied for, would not be considered. If the business is also a manufacturer, in addition to meeting the annual sales requirement, its total manufacturing employees could not exceed 250 persons.
- 5.8. Advertisements for bids or offers for contracts under the SBI shall be designated as Small Business Initiative advertisements. In awarding the contracts, only bids or offers from qualified SBI Vendors.
- 5.9. The Tollway reserves the right, at its discretion, to award a contract solicited under Tiers 1, 2 and 3 of the SBI program as an SBI contract or a contract under the Tollway's Small Business Set Aside Program.

6. TIERS OF SMALL BUSINESS INITIATIVE CONTRACTS

SBI contracts shall be advertised in one of three Tiers as listed below.

6.1. Small Business Initiative Tier 1

- 6.1.1. Construction contracts with an engineers' estimated dollar value of \$1,000,000 or less will be designated Tier 1 contracts and will be subject to the criteria specified in the bid documents and summarized below:

- 6.1.2. Prequalification by the Illinois Department of Transportation (“IDOT”) is not required.
 - 6.1.3. Tier 1 contracts will not include Diversity Goals. Prime contractors may be required to furnish the material, labor, equipment, and all incidentals necessary to self-perform up to 40 percent of the total Contract Award.
 - 6.1.4. Prime contractors will be required to utilize only SBI Vendors as subcontractors. Primes are not required to utilize SBI Vendors as suppliers. If a prime contractor cannot identify sufficient SBI Vendors to serve as subcontractors, the prime must submit a request for a Small Business Exception in accordance with Section 7.2, Small Business Exception Procedures.
- 6.2. Small Business Initiative Tier 2
- 6.2.1. Construction contracts with an engineers’ estimated dollar value between \$1,000,001 and \$3,000,000 will be designated Tier 2 contracts and will be subject to the criteria specified in the bid documents and summarized below:
 - 6.2.2. Prequalification from IDOT is not required for Tier 2 contracts unless otherwise specified by the Tollway in the bid documents.
 - 6.2.3. Tier 2 contracts include Diversity goals for Core Work as stipulated in the DBE and VOSB Special Provision.
 - 6.2.4. Prime contractors may be required to furnish the material, labor, equipment, and all incidentals necessary to self-perform up to 40 percent of the total Contract Award.
 - 6.2.5. Prime contractors will be required to utilize only SBI Vendors as subcontractors. Primes are not required to utilize SBI Vendors as suppliers. If a prime contractor cannot identify sufficient SBI Vendors to serve as subcontractors, the prime must submit a request for a Small Business Exception in accordance with Section 7.2, Small Business Exception Procedures.
- 6.3. Small Business Initiative Tier 3
- 6.3.1. Construction contracts with an engineers’ estimated dollar range between \$3,000,001 and \$5,000,000 will be designated Tier 3 contracts and will be subject to the criteria specified in the bid documents and summarized below:
 - 6.3.2. Prequalification from IDOT is not required for Tier 3 contracts unless otherwise specified by the Tollway in the bid documents.
 - 6.3.3. Tier 3 contracts include Diversity goals for Core Work as stipulated in the DBE and VOSB Special Provision.
 - 6.3.4. Prime contractors may be required to furnish the material, labor, equipment, and all incidentals necessary to self-perform up to 40 percent of the total Contract Award.
 - 6.3.5. Prime contractors will be required to utilize only SBI Vendors as subcontractors. Primes are not required to utilize SBI Vendors as suppliers. If a prime contractor cannot identify sufficient SBI- Vendors to serve as subcontractors, the prime must submit a request for a Small Business Exception in accordance with Section 7.2, Small Business Exception Procedures.

7. BIDDING PROCEDURES FOR SBI CONTRACTS

Compliance with the bidding procedures of this Special Provision is required prior to award of the contract. The failure of the as-read low bidder to comply will render said bidder’s bid non-responsive. All bids must be submitted electronically through the State’s BidBuy software. The bidder must notify subcontractors of the subcontractors’ inclusion in the bid within three (3) days being notified, by the Tollway, of its apparent low-

bidder status. If the contract is awarded, the bidder shall again notify the subcontractors.

7.1. Submission of the Small Business Plan, Small Business Form 2028-A (form 2028-A)

For Tiers 1, 2, and 3 a bidder must submit a Small Business Form 2028-A with its bid submission for the SBI.

If a bidder fails to submit Small Business Form 2028-A with its bid submission, it must submit the required form within 5 calendar days of being notified, by the Tollway, of its apparent low bidder status.

Any subcontractors identified at the time of bid that are not already registered with the SBI will have 5 calendar days to become registered. If the subcontractor does not meet the eligibility requirements, vendors may update the form 2028-A with a replacement SBI subcontractor or request an SBE.

All elements of information indicated on SBI Form 2028-A must be provided:

7.1.1. Prime participation

- Full description of scope of work;
 - Descriptions such as “miscellaneous” and prices such as “lump sum” are not acceptable and will not be approved until such time the scopes have been confirmed as required work of the contract.
- Total contract amount for the work to be completed by SBI prime contractor;
- Percentage of contract for the work to be completed;
- Registration status in the Chief Procurement Officer for General Services Small Business Set-aside Program (SBSP);
- Registration status in the Illinois Tollway Small Business Initiative (SBI);
- Participation status of prime contractor in the DBE/Vet Plan.

7.1.2. Small Business subcontractor plan

- Full firm name
- Full description of scope of work;
 - Descriptions such as “miscellaneous” and prices such as “lump sum” are not acceptable and will not be approved until such time the scopes have been confirmed as required work of the contract.
- Supplier status;
- Total subcontract amount for the work to be completed by the SBI subcontractor;
- Percentage of contract of the work to be completed;
- Registration status in the State of Illinois Small Business Set-aside Program (SBSP);
- Registration status in the Illinois Tollway Small Business Initiative (SBI);
- Participation status of subcontractor in the DBE/Vet Plan.

7.1.3. Name; signature and contact information required. Electronic signatures are acceptable.

7.2. Submission of Small Business Exception Small Business Form 2028-B

If a prime contractor cannot identify sufficient SBI Vendors to complete all subcontracted work, the prime contractor must submit ISTHA Small Business Form 2028-B for a Small Business Exception. Small Business Exceptions, either in whole or in total, requesting 40% or more of the total contract amount will not be considered. Small Business Exceptions greater than the self-performance requirement will be reviewed on a case-by-case basis. The request must document the scope of work for which SBI

Vendor participation is not available and the efforts the prime took to engage SBI Vendors to perform that scope of work. It also must include documentation confirming that the prime attempted to secure SBs that participated in the Tollway's Technical Assistance Program.

A prime contractor's request for an SBE must show the prime took all necessary and reasonable steps to subcontract with SBI Vendors. Necessary and reasonable steps are those that could reasonably be expected to obtain sufficient SBI Vendor participation.

ISTHA will consider the quality, quantity, and intensity of the efforts a prime contractor made to secure SBI Vendor participation. Mere pro forma efforts are not sufficient and will not be considered. A prime contractor is expected to actively and aggressively try to subcontract with SBI Vendors.

ISTHA will consider the following actions when evaluating a request for an SBE. The listed actions are not intended to be a mandatory checklist and are not intended to be exhaustive. Other actions or efforts brought to ISTHA's attention may be relevant and will be considered by ISTHA as ISTHA deems appropriate.

- 7.2.1. Soliciting SBI Vendors to perform contract work through all reasonable and available means (e.g., attendance at Webinars and Networking Sessions sponsored by the Department of Diversity and Strategic Development, attendance at pre-bid meetings, advertising and/or written notices). The prime contractor must follow-up on initial inquiries to determine, with certainty, if SBI Vendors are interested in performing contract work.
- 7.2.2. In a timely manner, providing interested SBI Vendors adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in becoming subcontractors.
- 7.2.3. Negotiating in good faith with SBI Vendors. Evidence of such negotiation includes the names, addresses, e-mail address and telephone numbers of SBI Vendors that were considered, and a description of the information provided regarding the plans and specifications for the work selected for subcontracting.
- 7.2.4. A prime contractor exercising good faith would consider a number of factors in negotiating with SBI Vendors and would take a Small Businesses' pricing and capabilities to perform contract work into account. The fact that there may be some additional costs involved to find and use an SBI Vendor is not in itself sufficient reason for a prime to fail to use an SBI Vendor, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make efforts to utilize an SBI Vendor. A prime contractor is not, however, required to accept quotes from an SBI Vendor if the quote is deemed excessive or unreasonable.
- 7.2.5. SBI Vendors may not be rejected as unqualified without sound reasons based on a thorough investigation of their capabilities. The SB contractor's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations are not legitimate causes for the rejection of or non-solicitation of bids from SBI Vendors.
- 7.2.6. Making efforts to assist interested SBI Vendors in obtaining bonding, lines of credit or insurance as required by the Tollway or the prime contractor.
- 7.2.7. Making efforts to assist interested SBI Vendors in obtaining necessary equipment, supplies, materials or related assistance or services.
- 7.2.8. Effectively using the services of available chambers of commerce, community organizations,

small business contractors' groups, local, state, and federal business assistance offices, and other organizations as allowed on a case-by-case basis to aid in the recruitment and placement of SBI Vendors.

- 7.3. Within 5 business days after receiving written notice of an adverse pre-final determination on its request for a Small Business Exception, a prime contractor may seek administrative reconsideration of the adverse pre-final determination by submitting a written request for administrative reconsideration to The Illinois State Toll Highway Authority, Chief of Diversity and Strategic Development at SBI@getipass.com. Any such submission must be transmitted via e-mail.
- 7.3.1. The pre-final determination shall become final if a request for administrative reconsideration is not received within the above 5-day period. After a pre-final determination is final, the Tollway will submit its determination for review by the CPO.
- 7.3.2. The administrative reconsideration procedure described in this Section is not intended to allow a prime contractor additional time to solicit SBI Vendors. Accordingly, neither the retention of an SBI Vendor nor evidence of negotiations with an SBI Vendor after the Tollway's pre-final determination will be considered in connection with a request for administrative reconsideration.
- 7.3.3. If a prime contractor seeks administrative reconsideration, the Chief of Diversity and Strategic Development, in the Chief's discretion, may extend an invitation to the contractor to meet in person or via video conference to facilitate the Chief's consideration of whether the prime contractor made all reasonable efforts to meet the requirement for a Small Business Exception. Such meeting shall extend the time for resolution of a request for administrative reconsideration.
- 7.3.4. Within 10 working days after receipt of a request for administrative reconsideration or the date of the above-referenced meeting, if any, the Chief of Diversity and Strategic Development will send the prime contractor a written decision regarding the request, including an explanation of the basis of the same. In the event the Chief of Diversity and Strategic Development determines that the prime contractor's efforts were sufficient, the prime contractor's request for a Small Business Exception will be approved. If the Chief of Diversity and Strategic Development determines that the prime contractor's efforts were insufficient, the Tollway will submit its determination for review by the CPO.

7.4. Submission of SMALL BUSINESS Payment Report

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

The contractor shall maintain a record of payments to all subcontractors and suppliers for work performed. The records shall be made available to ISTHA for inspection and copying upon request. After the performance of the final item of work or delivery of material by a subcontractor and final payment by the contractor, but not later than thirty (30) calendar days after payment has been made by ISTHA to the contractor for such work or material, the contractor shall submit partial and final waivers of lien.

All active Tollway vendors/contractors/consultants will be required to use B2GNow. Payments to both diverse and non-diverse subcontractors must be reported and confirmed monthly in the system at <https://iltollway.diversitysoftware.com/>.

8. Changes to the Small Business Plan

- 8.1. In no case should a Contractor remove, replace, or reduce the participation to the SBI vendor listed in the initial Small Business Plan 2028-A without prior written consent of ISTHA.
- 8.2. Additions to the plan during the term of the contract shall follow the process as specified in the contract.

9. SANCTIONS

The Tollway will periodically review the contractor's compliance with this Special Provision and the terms of its contract with the contractor, including the Small Business Subcontractor Plan. Without limitation, the contractor's failure to comply with this Special Provision or its Small Business Subcontractor Plan, failure to cooperate in providing information regarding its compliance with this Special Provision or its Small Business Subcontractor Plan, or provision of false or misleading information or statements concerning compliance, registration status of SBI Vendors, good faith SBE supporting documentation or any other material fact or representation shall constitute a material breach of this contract. Such breach shall entitle the Tollway to declare a default, terminate the contract, impose sanctions, impose liquidated damages and/or exercise any other remedies provided for in the contract or at law or in equity.

Sanctions may include, but are not limited to, monetary sanctions (including non-release of retainage), imposition of the monetary cost of audits resulting in findings of noncompliance, liquidated damages based on the damage to the Tollway from the contractor's lack of good faith SBE supporting documentation and/or failure to meet other requirements of this Special Provision, and any other sanctions permitted by law.

If an SBI Vendor that, in order to meet the SBE program requirements, uses or attempts to use, on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of the SBI, upon CPO concurrence, the Tollway may initiate action against the involved SBI firms to preclude their participation in the Tollway SBI.

10. INACCURATE OR FRAUDULENT REPORTING

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

11. OTHER REGULATIONS

Adherence to the SBI requirements does not abrogate other responsibilities of the contractor to comply with affirmative action requirements under federal or state law, municipal ordinance, prevailing government regulations or terms contained elsewhere in the contract.