

## ATTACHMENT B

### DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION

#### DEPARTMENT OF TRANSPORTATION POLICY

It is the policy of the Department of Transportation that socially and economically disadvantaged and women's business enterprises (DBEs), as defined at Title 49, Code of Federal Regulations, Part 23 and 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. Consequently, the DBE requirements of 49 CFR, Part 23 and 26, shall apply to any agreement resulting from this procurement.

Participants in this procurement agree to ensure that DBEs, as defined at 49 CFR, Part 23 and 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds. In this regard, the Proposers shall take all necessary and reasonable steps in accordance with 49 CFR, Part 23 and 26, and GCRTA's DBE Program to ensure that DBEs have the maximum opportunity to compete for the performance of contracts. Neither the Proposers nor the selected contractor shall discriminate on the basis of race, color, national origin or sex in the performance of a resulting DOT-assisted contract.

#### I. OVERALL GOALS

The term "**disadvantaged business**" means a small business concern, which is at least 51 percent owned by one or more socially and economically disadvantaged persons or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operation are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**"socially and economically disadvantaged individuals"** means a citizen of the United States (or lawfully admitted permanent resident) who meets the criteria set forth in 49 C.F.R. Section 26.5. The GCRTA annually sets overall DBE goals for work to be performed under GCRTA contracts, including construction activity procurement of common goods and services, and personal service contracts. While the expected percentage of certified DBE utilization may vary from contract to contract due to the availability of DBEs in any given line of work, the GCRTA believes that overall goals to be realistically obtainable over time with the assistance of the federal government, the business community and DBE organizations.

In order to meet Federal requirements and to provide for maximum participation of certified DBEs, the GCRTA specifies a percentage of participation goal in contracts with subcontracting opportunities (the percentage may be zero).

The transit vehicle manufacturers are exempt from the requirements, Terms and Conditions of this Attachment B, but must, as a condition for bidding, show evidence of FTA certification.

#### II. CONTRACT GOALS

**The GCRTA has specified a DBE goal of fifteen (15%) percent for the work to be performed under this contract.**

- A. When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
  1. Count the entire amount of that portion of a construction contract (or other contract not covered by Paragraph (A)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor its affiliate).

2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
  - a) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  - b) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
4. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (when applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and of the relevant factors DBE does not perform a commercially if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to :
  - a) 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.
  - b) A person 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 person both owns and operates distribution equipment for long-term lease agreement and not on an ad hoc or contract by contract basis.
  - c) Packagers, brokers, manufacturers', representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph.
  - d) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

Sixty percent of the total dollar value will be counted in the case of a DBE supplier that is not a manufacturer, provided that the DBE supplier performs a commercially useful function in the supply process to include brokers etc in accordance with 49 CFR 26.55 Paragraph 2b.

**III. BIDDING REQUIREMENTS, TERMS AND CONDITIONS**

A. In addition to any other requirements contained in this Invitation to Bid or Request for Proposal, the following DBE Program requirements must be satisfied, bid must include a representation that:

1. The Proposer has met the goal established by the Authority for this procurement, or
2. The Proposer has made a good faith effort to attain the level of DBE participation sought by the Authority for this procurement

Each Proposer must include a statement in attachment B-1 of the level of DBE participation attained through such effort. This submittal is regarded as a matter of bid responsiveness. Failure to make these submittals will serve to disqualify the bid as non-responsive to this Invitation to Bid.

B. Each Proposer should also prepare a complete DBE Participation Plan that sets forth the extent of DBE involvement in this procurement, these materials are to be provided upon request, and will be considered in determining Proposer responsibility.

B. DBE participation plans shall include the following minimum information:

1. DBE Participation Schedule, (Attachment B-3) which includes:
  - a) Names and addresses of the DBE entities that will participate in the contract;
  - b) The dollar amount of the participation of each named DBE;
  - c) A description of the work each named DBE will perform;
  - d) Verification of Certification attachment B-2 and Letter of Intent (Attachment B-4) from each DBE whose participation is proposed for the performance of this contract as a subcontractor or joint venture partner.
2. If the DBE goal is not met, the Proposer must document in attachment B-5 entitled Greater Cleveland RTA Office of Small Business Evaluation Form Good Faith Effort Documentation the good faith efforts it made to include DBE participation in the contract. . The documentation of the efforts is discussed in greater detail in paragraph 6 of this Section.
3. The following standards shall be applied in assessing the responsibility of the DBE plan submitted:
  - a) Whether the participation plan contains capable currently certified DBE firms.
  - b) Whether the firms listed in the plan are performing a commercially useful function
  - c) Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
  - d) Whether the plan exhibits a likelihood of goal attainment.
  - e) Whether the prime/sub relationships are firm, i.e., whether conditional subcontractors have been entered.

D. The contractor must receive the approval of GCRTA Office of Small Business before termination or making substitution for any subcontractors listed in its DBE plan.

Authority certified DBE entities are eligible for inclusion in a plan. Consult the DBE Directory, which is available upon request from the Procurement Department or the Office of Small Business (OSB) of the Authority for assistance in ascertaining certified status of some DBEs. All DBE entities are eligible for certification. Applications for certification must be made on the GCRTA Office of Small Business Disadvantaged Business Enterprise Certification Application (available on request of OSB) and submitted in advance of bid date.

1. The Authority will attempt to certify proposed DBE entities prior to bid; however it will not consider request for certification not completed prior to submittal of bids.
  2. Proposer should not rely upon the approval of the certification applications submitted by its proposed DBEs will be approved for participation credit for this procurement. Certification for participation credit for this procurement will not be made after bids/proposals are opened).
  3. However, substitution of DBE entities appearing in a plan may be permitted where the Disadvantaged Business Enterprise Officer (DBEO) determines that such substitution will not result in an abuse of the DBE Program. The burden of demonstrating the propriety of such substitution lies with the Proposer seeking such substitution. Denial of certification is final for the pending contract. Any person denied certification may appeal such decision in accordance with the provisions of 49 CFR, Part 26, Section 28.89, which is reproduced as part of the Joint Certification Application.
- E. The Authority may at any time prior to award seek clarification or additional information bearing upon Proposer responsibility in respect of DBE involvement with this procurement. If sought, such
- F. Information will be strictly confined to matters of Proposer responsibility and should be received by the Authority within three (3) business days of the date request thereof is made.

The Proposer's commitment to a specific goal for DBE utilization as detailed in its DBE Plan shall constitute a presumption that good faith efforts to meet the DBE goal by subcontracting to or undertaking to joint venture with DBE firms have been made. If the Proposer fails to meet the goal, it will carry the burden of furnishing sufficient documentation, demonstrating its good faith efforts, by utilization.

The standard by which the Authority will determine whether the efforts made by a Proposer were good faith efforts is whether such efforts could be reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement in reaching this decision, the Authority may consider all efforts advanced by the Proposer as well as the following:

1. Did the contractor attend any scheduled pre-solicitation or pre-bid meetings to inform DBEs of contracting and subcontracting opportunities?
2. Did the contractor advertise in general circulation, trade association and minority-focus media concerning the subcontracting opportunities?
3. Did the contractor provide written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively?
4. Did the contractor/supplier follow up with the DBE firms interested in participating.
5. Did the contractor/supplier select portions of work to be done by DBEs (including dividing contracts into economically feasible units to facilitate participation)?

6. Did the contractor provide adequate information about plans, specifications, and/or contracting requirements?
  7. Did the contractor negotiate in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons?
  8. Did the contractor make efforts to provide assistance to obtain bonding, lines of credit, or insurance?
  9. Did the contractor effectively use the services of available minority and female organizations, contractors' groups, state and local offices, etc., that have knowledge of available DBE firms or the names or organizations to locate such firms?
- H. In the event a contract is awarded as a result of this procurement, the DBE Participation Plan submitted by the successful Proposer and the terms, conditions and requirements contained in this notice shall become an integral part of the contract, binding said Proposer to full and faithful performance in accordance with said plan.
- I. Any award resulting from the procurement shall be and is conditioned upon the attainment of the aforesaid goals or the satisfactory showing of good faith efforts to attain said goals.
- J. During the performance of any resulting contract and for a period of up to three (3) years following completion of the contract work the Authority may initiate reviews for compliance with the requirements of the Authority's DBE Program and the successful Proposer's (hereinafter "*Contractor*") DBE Participation Plan such reviews may involve review of monthly statements, desk audits and/or onsite reviews. Where a Contractor is found by the Authority to have failed to comply with the requirements of the DBE Program or the Contractor's DBE Participation Plan, the Contractor will be required to take corrective action. If corrective action is not promptly taken by the offending Contractor, the following sanctions may be imposed (singly, in any combination, and in addition to any other remedies provided by law or equity):
1. The Authority may withhold all further payments under the contract.
  2. The Contractor may be ordered to stop work
  3. The contract may be terminated for breach.
  4. Suspension or debarment proceedings may be commenced in accordance with 49 CFR, Part 29.
  5. The Director of Procurement may find the defaulting contractor non-responsible in respect to other solicitations for a stated period of time.
  6. The contract payments may be reduced by an amount equal to that designated in the DBE plan for DBE participation.
  7. The relevant performance bond(s) may be enforced.
- K. Agreements between a supplier/contractor and a DBE in which the latter promises not to provide subcontracting quotations to other suppliers/contractors are prohibited.
- L. The Contractor will keep records and documents for three (3) years following performance of this contract to indicate compliance with this notice. Such records and, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representative of the Authority and will be submitted to Authority upon request with any other compliance information which such representative may require.

- M. If, at any time, the Department of Transportation or RTA has reason to believe that any person or firm has willfully or knowingly provided incorrect information or made a false statement, it may refer the matter to the General Counsel of the Department of Transportation. They may initiate debarment proceedings in accordance with 41 CFR 1-1.604 and 12-1.602 and/or refer the matter to the Department of Justice under 18 U.S.C. 1001, as they deem appropriate.
- N. Proposers and Contractors agree to be bound by all the requirements, terms and conditions of this notice.
- O. Nothing in this notice shall be interpreted to diminish the present contract compliance review.

**ENCLOSURE B-1****DECLARATION OF PROPOSED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION**

*THIS PAGE MUST BE COMPLETED BY PRIME PROPOSER TO INDICATE THE AMOUNT (PERCENTAGE) OF DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION.*

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The undersigned, as a representative of the entity, \_\_\_\_\_, submitting a bid/proposal for the \_\_\_\_\_ project, hereby acknowledges that the DBE goal established for this project is \_\_\_\_\_ %.

Note: Proposer shall make one of the two certifications noted below:

1.  The Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is \_\_\_\_\_ % and represents attainment of the DBE participation goal Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation are attached.
2.  The Proposer further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is \_\_\_\_\_ %. However, this level of DBE participation is less than the goal established for this project. The Proposer has attached:
  - a. the Schedule of DBE participation showing the level of DBE participation the Proposer has been able to obtain, supplemented with Letters of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation; and,
  - b. documentation of the Proposer's good faith efforts to achieve the goal established for this project. This documentation shall include Certificates of DBE Unavailability for each contacted by the prime Proposer which will not be participating in performance of the contract). The documentation of the these efforts is discussed in greater detail in Section III. G of Attachment D.

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 Date

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 Representative of Proposer

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 Title

(TO BE SUBMITTED WITH BID)

**ENCLOSURE B-2**  
**DBE AFFIDAVIT**

THIS PAGE TO BE COMPLETED BY DISADVANTAGED BUSINESS ENTERPRISE CONTRACTOR.

I hereby declare and affirm that I am the \_\_\_\_\_ and  
duly authorized representative of the (firm of) \_\_\_\_\_  
\_\_\_\_\_(name of corporation or joint venture) whose  
address is \_\_\_\_\_

\_\_\_\_\_  
(Telephone Number)

I HEREBY DECLARE AND AFFIRM THAT I AM A DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
AS DEFINED BY THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY IN THE  
SPECIFICATIONS FOR

\_\_\_\_\_  
\_\_\_\_\_  
(IFB number and name)

AND THAT I WILL PROVIDE INFORMATION AND/OR THE CERTIFICATION TO DOCUMENT THIS  
FACT.

I DO SOLEMNLY SWEAR OR DECLARE AND AFFIRM THAT THE CONTENTS OF THE FOREGOING  
STATEMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE  
ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

\_\_\_\_\_  
(Affiant) \_\_\_\_\_ (Date)

State of \_\_\_\_\_ )  
\_\_\_\_\_)  
City and County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned  
officer personally appeared.

\_\_\_\_\_, known to me to be the person described in the foregoing  
Affidavit, and acknowledged that he (she) executed the same in the capacity therein stated and for the  
purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
(Notary Public)

(SEAL)

**ENCLOSURE B-3**  
**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PLAN**

<b>Name of Prime Contractor</b>			
<b>Name of Project</b>			
<b>Project/Contract No</b>		<b>Total Bid Amount</b>	

Name of DBE	Address	Contact Person	Scope of Work	Dollar Value of Work
1.				
2.				
3.				
4.				
5.				
6.				
7.				
			<b>Total DBE Dollars/%</b>	

The undersigned will enter into formal agreement with the DBEs listed above for work in this schedule conditioned upon the award of a contract by the Greater Cleveland Regional Transit Authority (GCRTA).

<b>Signature of Prime Contractor Representative</b>	<b>Phone Number</b>	<b>Date</b>
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The standard by which the Authority will determine whether the efforts made by a competitor were good faith efforts is whether such efforts could be reasonably be expected to produce sufficient DBE participation to meet the goals set for this procurement in reaching this decision, the Authority may consider all efforts advanced by the competitor as well as the following:

1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBEs of contracting and subcontracting opportunities;
2. Whether the contractor advertised in general circulation, trade association, and minority-focus media concerning the subcontracting opportunities;
3. Whether the contractor provided written notice to a reasonable number of specific DBEs, that their interest in the contract was being solicited in sufficient time to allow the DBEs to participate effectively;
4. Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Whether the contractor provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
7. Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
8. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and
9. Whether the contractor effectively used the services of available minority community organizations; disadvantaged contractors' groups; local, state and Federal disadvantaged business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

The following standards shall be applied in assessing the responsibility of the DBE plan submitted:

1. Whether the participation plan contains capable certified DBE firms.
2. Whether the firms listed in the plan are performing a commercially useful function.
3. Whether the listed firms are sharing monetary benefit in proportion to their share of the work of the project.
4. Whether the plan exhibits a likelihood of goal attainment.
5. Whether the prime/sub relationships are firm, i.e., whether conditional subcontractors have been entered.

**ENCLOSURE B-4**  
**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR**

Project: \_\_\_\_\_  
No.: \_\_\_\_\_  
Location: \_\_\_\_\_

To: \_\_\_\_\_ Prime or General  
Proposer  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City/State

I am the \_\_\_\_\_ and duly authorized representative of the (firm of) \_\_\_\_\_ which intends to perform work for the above project operating as *(strike out conditions that do not apply)* an individual, a Company, a Corporation, organized and existing under the law of the State of \_\_\_\_\_, or a Proprietorship, a Partnership, or Joint Venture consisting of:

\_\_\_\_\_  
\_\_\_\_\_

The firm that I represent is a Disadvantaged Business Enterprise (DBE) as defined by the Greater Cleveland Regional Transit Authority in the specifications for:

\_\_\_\_\_  
*(IFB Name and Number)*

I further represent that the firm is a Disadvantaged Business Enterprise which: is currently certified by the Greater Cleveland Regional Transit as a disadvantaged business enterprise with a certification date of \_\_\_\_\_.

I will provide information and/or the certification to document the representation noted above upon your request.

The undersigned is prepared to perform the following described work in connection with the above project, (specify in appropriate detail particular work items or parts thereof to be performed):

\_\_\_\_\_  
\_\_\_\_\_

at the following price: \_\_\_\_\_.

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

<u>Type of Work and Items</u>	<u>Work Hours Involved</u>	<u>Projected Commencement Date</u>	<u>Projected Completion Date</u>
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____
4. _____	_____	_____	_____

- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

I further represent that \_\_\_\_\_ percent (\_\_\_\_%) of the dollar value of my subcontract will be performed by contractors and/or suppliers, which are not certified by the Authority as a Disadvantaged Business Enterprise.

The undersigned will enter into a formal agreement for the above work with you conditioned upon your execution of a contract with the Authority.

Respectfully submitted, this  
\_\_\_\_\_ day \_\_\_\_\_, 199\_\_\_\_\_

(DBE Firm Name) \_\_\_\_\_  
(Address) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Signature) \_\_\_\_\_  
(Name Typed) \_\_\_\_\_  
(Title) \_\_\_\_\_

(SEAL IF PROPOSER IS A CORPORATION)



Affiant further says that the partnership is represented by the following attorneys:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ and is also represented and is also represented by the following resident agents in the City of Cleveland:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Corporation only

Affiant further says that the following is a complete and accurate list of the officers, directors and attorneys of said corporation:

President

Directors:

Vice President

Secretary

Local Manager or Agent

Attorneys

And that the following officers are duly authorized to execute contracts on behalf of said corporation \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Affiant further says that the proposal or bid filed herewith is not made in the interest of or on behalf of any undisclosed person, partnership, company, association, organization or corporation; that such bid is genuine and not collusive or sham; that said Proposer has not, directly or indirectly, induced or solicited any other Proposer to put in a false or sham bid, and has not directly or indirectly, colluded, conspired, connived or agreed with any Proposer or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that said Proposer has not in any manner, directly or indirectly sought by agreement, communication or conference with anyone to fix the bid price of said Proposer or of any other Proposer, or to fix any overhead, profit, or cost element of such bid price or that of any other Proposer, or to secure any advantage against the Greater Cleveland Regional Transit Authority, the Board, or anyone interested in the proposed contract; that all statements contained in such bid are true, that said Proposer has not, directly or indirectly, submitted his bid price or any breakdown thereof or the contents thereof or the contents thereof, or divulged information or data relative thereto, or paid or agreed to pay, directly or indirectly, any money, or other valuable consideration for assistance or aid rendered or to be rendered in procuring or attempting to procure the contract above referred to, to a corporation, partnership, company, association, organization, or to any member or agent thereof, or to any other individual, except to such person or persons as herein above disclosed to have a partnership or other financial interest with said Proposer in his general business; and further that said Proposer will not pay or agree to pay, directly or indirectly, any money or other valuable consideration to any corporation, partnership, company, association, organization or to any member or agent thereof, or to any other individual, for aid or assistance in securing contract above referred to in the

event the same is awarded to \_\_\_\_\_

\_\_\_\_\_  
(name of individual, partnership or corporation)

Further affiant saith not.

\_\_\_\_\_  
Company or Partnership

\_\_\_\_\_  
(President other official title)

Sworn to before me and subscribed in my presence this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

