

Current Practices to Set and Monitor DBE Goals on Design-Build Projects and Other Alternative Project Delivery Methods

DETAILS

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NCHRP

SYNTHESIS 481

**NATIONAL
COOPERATIVE
HIGHWAY
RESEARCH
PROGRAM**

Current Practices to Set and Monitor DBE Goals on Design-Build Projects and Other Alternative Project Delivery Methods

A Synthesis of Highway Practice

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FOREWORD

Highway administrators, engineers, and researchers often face problems for which information already exists, either in documented form or as undocumented experience and practice. This information may be fragmented, scattered, and unevaluated. As a consequence, full knowledge of what has been learned about a problem may not be brought to bear on its solution. Costly research findings may go unused, valuable experience may be overlooked, and due consideration may not be given to recommended practices for solving or alleviating the problem.

There is information on nearly every subject of concern to highway administrators and engineers. Much of it derives from research or from the work of practitioners faced with problems in their day-to-day work. To provide a systematic means for assembling and evaluating such useful information and to make it available to the entire highway community, the American Association of State Highway and Transportation Officials—through the mechanism of the National Cooperative Highway Research Program—authorized the Transportation Research Board to undertake a continuing study. This study, NCHRP Project 20-5, “Synthesis of Information Related to Highway Problems,” searches out and synthesizes useful knowledge from all available sources and prepares concise, documented reports on specific topics. Reports from this endeavor constitute an NCHRP report series, *Synthesis of Highway Practice*.

This synthesis series reports on current knowledge and practice, in a compact format, without the detailed directions usually found in handbooks or design manuals. Each report in the series provides a compendium of the best knowledge available on those measures found to be the most successful in resolving specific problems.

PREFACE

*By Tanya M. Zwahlen
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This report reviews and synthesizes current practices and challenges that state departments of transportation (DOTs) face as they set and monitor the Federal Disadvantaged Business Enterprise (DBE) program goals on design-build and other alternative delivery projects. This study focuses on key issues associated with DBE contract goals, including how requirements are established, how submissions are evaluated, how program compliance is monitored through the contract, and what mechanisms are available to state DOTs for enforcement.

Information used in this study was acquired through a literature review, a compilation of documents relevant to state DOT practices, in-depth interviews with state DOT staff, and follow-up reviews.

David J. Keen and Linsay Edinger, Keen Independent Research LLC, Denver, Colorado; Keith Wiener, Holland & Knight LLP; and Ed Salcedo, GCAP Services, Inc., collected and synthesized the information and wrote the report. The members of the topic panel are acknowledged on the preceding page. This synthesis is an immediately useful document that records the practices that were acceptable within the limitations of the knowledge available at the time of its preparation. As progress in research and practice continues, new knowledge will be added to that now at hand.

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Note: Many of the photographs, figures, and tables in this report have been converted from color to grayscale for printing. The electronic version of the report (posted on the web at www.trb.org) retains the color versions.

CURRENT PRACTICES TO SET AND MONITOR DBE GOALS ON DESIGN-BUILD PROJECTS AND OTHER ALTERNATIVE PROJECT DELIVERY METHODS

SUMMARY Use of traditional methods for disadvantaged business enterprise (DBE) contracting goals on design-build projects is challenging for state transportation departments and design-build teams. Many state departments of transportation (DOTs) have responded to the challenge by creating new methods for applying DBE contract goals to design-build and other alternative delivery method projects. This study reviews and synthesizes these traditional and new methods, as well as other aspects of the Federal DBE Program as it pertains to U.S.DOT-funded alternative delivery method projects.

At the time of this report, at least 45 states plus the District of Columbia and Puerto Rico had used design-build as a delivery method for state DOT projects. Somewhat fewer had experience with public-private partnerships (P3) and construction manager at risk (CMAR) or construction manager/general contractor (CMGC) delivery methods. Among the state DOTs that had used alternative delivery methods for U.S.DOT-funded projects, 33 applied DBE contract goals. State DOTs that were not using DBE contract goals on alternative delivery method projects were typically those that do not set DBE contract goals for any U.S.DOT-funded projects.

The federal regulations at Title 49 Code of Federal Regulations (CFR) Part 26 provide requirements for state and local governments to implement the Federal DBE Program and, when necessary, use DBE contract goals. The typical process for a design-bid-build project starts with the state DOT setting a goal for DBE participation, usually expressed as a percentage of total cost (e.g., 8%). Bidders on that project are required to meet the DBE goal or show good faith efforts to do so. If a bidder has neither met the goal nor demonstrated good faith efforts, federal regulations require its bid to be rejected. Bidders usually provide the state DOT with supporting information, including a list of dollar commitments to specific DBEs. After contract award, the state DOT monitors whether those DBEs actually receive the committed work.

State DOTs were reviewed to determine whether they have adapted this standard application of DBE contract goals for alternative delivery method projects. If so, what has been their experience? Do any of these new methods approach a new standard for application of DBE contract goals?

All 50 states plus the District of Columbia and Puerto Rico were contacted for in-depth interviews. Interviews were completed with 47 of the 52 state DOTs, a 90% response rate. For the five agencies not successfully reached for an interview, the necessary information was gathered through a review of relevant agency reports and documents. In addition, telephone interviews were conducted with contractors and contractors associations, FHWA staff, DBEs, and others.

The study found that five state DOTs (Delaware, Indiana, Mississippi, Pennsylvania, and Tennessee) apply DBE contract goals to design-build projects using the same methods

they use for design-bid-build projects. At the time of this report, two state DOTs (Colorado and Connecticut) applied traditional methods for CMAR/CMGC projects. These state DOTs use the limited information available at the beginning of the procurement process to set a DBE contract goal for the design-build or CMAR/CMGC project. Proposers must meet the goal or show good faith efforts as part of their proposal submissions. Proposers provide a detailed list of DBE commitments for the design-build project, including types of work and subcontract amounts for those DBEs.

Other state DOTs have tried this approach and found it inadequate given the nature of design-build, CMAR/CMGC, and P3 projects. Contractors attempting to comply with DBE contract goals suggested changes to the traditional approach:

- Colorado DOT (CDOT) indicated that its use of traditional methods for DBE contract goals resulted in design-builders making specific DBE commitments that they later had to change before the work occurred. CDOT reported that contractors much prefer its new system, which allows the selected design-builder to provide commitments for DBE construction firms later in the project (but before those firms are used).
- New York State DOT's design-build manual states that applying traditional methods for DBE contract goals would require DBEs to provide firm quotes for items that have not been designed. New methods of implementing the DBE contract goals are required to avoid placing DBEs and other subcontractors at risk of bidding on incomplete plans. Under the new methods, the design-builder secures DBEs as the design of project components is completed.
- South Carolina DOT used traditional DBE contract goal methods until May 2014. SCDOT indicated that it was dissatisfied with requiring commitments at time of proposal, as were DBEs and prime contractors. SCDOT reported that DBEs sometimes backed out of commitments they had made at contract award because they could not do the work or could not keep their prices by the time their work came up, which might be 2 years later. Prime contractors complained that it was difficult to make commitments because so little was known about project design at time of proposal. SCDOT changed its requirements so that proposers now submit a plan for DBE participation at time of proposal. The selected design-builder must then submit DBE commitments within 180 days of project award. According to SCDOT, primes, DBEs, and agency staff all found this method acceptable.
- Utah DOT (UDOT) reported that traditional application of DBE contract goals was unsatisfactory for the agency, prime contractors, and DBEs. They found that design-build projects evolved quickly as design progressed, which often resulted in changes in subcontracted work items. As a result, some DBE commitments that were made during the proposal period could not be fulfilled, leaving committed DBEs without work. (Staff described this process as a nightmare.) At time of proposal, UDOT now requires proposers to commit only to meeting the DBE contract goal or to demonstrate that they have made good faith efforts to do so. The proposer no longer needs to submit DBE commitments at time of proposal or before contract execution. Instead, the selected design-builder must submit DBE commitment before use of the subcontractor. UDOT reported that this approach substantially improved the process for applying DBE contract goals to design-build projects.
- The California Department of Transportation—Caltrans—reported more opportunities for a prime contractor to meet the DBE contract goal on a design-build project than a traditional project because of its size and length of construction time (most are 3–4 years in length). To take advantage of these differences, Caltrans modified its approach to applying DBE contract goals. Caltrans now requires a plan for DBE participation as part of its proposals. During performance of the contract, the selected design-builder identifies the DBEs that will be involved. The new approach allows the design-builder the time and flexibility to customize work components and develop smaller scopes of work to involve more DBEs.

- Until 2014, Virginia DOT (VDOT) applied its traditional design-bid-build approach to DBE contract goals, including a requirement that proposers identify commitments to DBEs with their proposals. VDOT received widespread negative feedback from prime contractors expressing concern that DBEs might be unable to fulfill their obligations because of the extended period between the proposal and the actual commencement of subcontracted work. Based on input from prime contractors and DBEs as well as suggestions from staff in its divisions, VDOT developed a new approach to DBE contract goals that moved the requirement for DBE commitments to later in the process. VDOT initially used this model in its P3 projects and has extended it to design-build projects.

In sum, representatives of many state transportation departments, contractors, DBEs, and FHWA report substantial difficulties applying traditional DBE contract goal approaches for alternative delivery method projects. They indicate that new methods focusing on a DBE plan at time of proposal, rather than commitments to specific DBEs, can achieve more of the objectives of the Federal DBE Program. State DOTs can require or strongly urge proposers to include many different strategies for assisting DBEs and other small businesses in their DBE plans.

State DOTs also report that higher DBE goals can be set under the new approaches, and prime contractors are better able to meet them (and consistently do so). Based on the interviews conducted for this report, prime contractors, DBEs, and state DOTs appear to be better served by these new approaches. The approaches do require expanded monitoring methods to ensure that DBE plans are effectively implemented by the selected contractor.

When examining the CMAR or CMGC delivery approach, the study also found that most state DOTs have developed new methods for applying DBE contract goals. Most state DOTs using CMAR/CMGC do not set a DBE contract goal at time of proposal. Instead, the DBE goal is developed when more of the design is complete. Because no DBE contract goal has been set at the time of proposal, proposers commit to making good faith efforts to meeting a DBE goal that will be set at a future date (before construction). Some state DOTs also require a DBE plan from the proposer, which is evaluated as part of the proposal process.

Based on interviews and other review, additional study conclusions include the following:

- Some state DOTs indicated that DBE contract goals were less successful in their states because staff implementing the Federal DBE Program were not involved from the beginning, or there was a lack of cooperation from contracts or project delivery divisions. Some interviewees noted that successful implementation of the DBE program requires an organization-wide commitment from both the public agency and the contracting team.
- The proposal selection process in alternative delivery method projects provides state transportation departments with opportunities to achieve more of the objectives of the Federal DBE Program, especially through evaluation and scoring of DBE plans.
- Requirements for proposers and the selected design-builder, and criteria for how qualifications and proposals will be evaluated, must be clearly articulated in requests for qualifications (RFQs), requests for proposals (RFPs), contracts, and related documents. If not, there is potential for confusion and misunderstanding, possibly weakening administration of DBE contract goals.
- Regulations prohibit certain practices sometimes previously employed by state DOTs in applying DBE contract goals to alternative delivery method projects. For example, federal regulations prohibit awarding extra points if a proposer indicates DBE participation exceeding a DBE contract goal. The same factors cannot be used in both the RFQ and RFP evaluation stages. And state DOTs must not treat the DBE goal as a quota that must be met—federal regulations say that a contractor's showing that it

has made good faith efforts to meet a DBE contract goal shall be an acceptable way to comply with the goal set for a project. If a state DOT determines that a design-builder has not met the good faith efforts requirement, the firm can ask for reconsideration of that decision.

Although many state DOTs have seen the need to adopt new methods to applying DBE contract goals to alternative delivery method projects, based on interviews with state DOT and FHWA staff, they are doing so with very limited knowledge, experience with the methods, or guidance from U.S.DOT. Study results indicate that most long-standing state DOT practices as well as available U.S.DOT guidance and training do not relate to alternative delivery method contracts. Regulations governing the Federal DBE Program in 49 CFR Part 26 primarily relate to design-bid-build projects and traditional consultant contracts.

Lack of knowledge and little guidance are the principal barriers to further refinement and implementation of the new methods. State DOTs would value additional information about successes and failures, as well as clarification from U.S.DOT or FHWA.

Future research could include topics such as (1) new DBE program language for RFPs and other contract documents; (2) options for how and when to establish a DBE goal on design-build and CMAR/CMGC projects and on public-private partnership (P3) contracts; (3) how and when to evaluate whether the contractor has met the DBE goal or shown good faith efforts to do so; (4) DBE plan requirements and state DOT evaluation methods; (5) effective monitoring; (6) steps to ensure consistency with federal regulations; and (7) any opportunities to extend these new methods for applying DBE contract goals to traditional design-bid-build contracts.

Such information would be an invaluable resource for DBE program staff, legal staff, contracting staff, project management staff, contractors, DBEs, and U.S.DOT related to how the Federal DBE Program relates to each aspect of alternative delivery method projects.

CHAPTER ONE

INTRODUCTION

This study reviews and synthesizes current practices and challenges that state departments of transportation face as they implement the Federal Disadvantaged Business Enterprise (DBE) Program for design-build projects and other alternative project delivery methods. As DBE contract goals are an important component of the Federal DBE Program, the study focuses on application of this element of the program. Key issues include the following:

- How and when agencies set DBE contract goals for these projects;
- What proposers are required to submit at the qualifications or proposal submission stage;
- How submissions concerning DBE participation are evaluated;
- What is required at time of contract award;
- How program compliance is monitored through the contract; and
- Enforcement mechanisms available to state departments of transportation (DOTs).

Federal regulations and years of state DOT implementation of DBE contract goals govern how contract goals are applied to design-bid-build contracts. In contrast, there are few federal regulations specific to the application of DBE contract goals on alternative delivery method projects. Even recent research about state DOT use of design-build provides little information on the topic (see, for example, Transportation Design-Build Users Group 2009).

An examination was undertaken as to whether state DOTs have adapted their standard application of contract goals for alternative delivery method projects. If so, what has been their experience? Do any of these new methods approach a new standard for application of DBE contract goals?

These questions were answered through a review of past research, compilation of documents relevant to state DOT practices, in-depth interviews with state DOT staff and others, and follow-up review. Information concerning use of alternative delivery methods was obtained for every state, and interviews were completed with staff of nearly every state DOT.

In addition to design-build projects, the study assessed application of DBE contract goals to construction manager

at risk (CMAR) and construction manager/general contractor (CMGC) projects as well as public-private partnership (P3) projects, as further defined here.

Although the study focuses on state DOTs, the literature review and interviews examined other examples of transportation projects as well. Study methods are discussed in more detail at the end of this chapter, and the bibliography at the end of the report lists key information sources.

The balance of chapter one—

- Briefly defines the alternative delivery methods examined;
- Introduces key elements of the Federal DBE Program as they apply to alternative delivery method projects;
- Summarizes the study approach; and
- Introduces other chapters of the report.

TYPES OF ALTERNATIVE DELIVERY METHOD PROJECTS

The study examines the following types of alternative delivery method projects. The introductions to each method follow the definitions provided by FHWA. (See the glossary at the end of the report for additional definitions of terms and acronyms.)

- **Design-build.** Design-build (DB) is a project delivery method that combines two, usually separate, services into a single contract. With design-build procurements, owners execute a single, fixed-fee contract for both architectural/engineering services and construction. The design-build entity may be a single firm, a consortium, a joint venture, or other organization assembled for a particular project (FHWA 2014b).
- **Construction manager at risk or construction manager/general contractor.** The construction manager/general contractor (CMGC) project delivery method allows an owner to engage a construction manager during the design process to provide constructability input. The construction manager is generally selected based on qualifications, past experience, or best value. During the design phase, the construction manager provides input regarding scheduling, pricing, phasing, and other project components that helps the owner design a more constructible project. At an average of 60% to 90% design comple-

tion, the owner and the construction manager negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. In some states the CMGC delivery method is called the construction manager at risk (CMAR) method (FHWA 2014a).

- **Public-private partnerships.** Public-private partnerships (P3s) are contractual agreements formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of public facilities (FHWA 2014c).

These delivery methods differ from traditional design-bid-build contracts. Proposers are allowed, and often encouraged, to furnish alternative technical concepts (ATCs), which are alternative design solutions for features of work designated by the agency in its design-build request for proposals (RFP) (Carpenter 2010). In addition, contracts are awarded before designs are complete (or sometimes even begun), which means that the total dollars for various subcontracting and supply components are not known. Unless required by the owner, it is not typical for prime contractors to identify or enter construction subcontracts at the time of award. Typical methods for setting DBE contract goals and evaluating good faith efforts to meet that goal can be challenging to apply to alternative delivery method contracts. As described in this report, alternative delivery projects may also present complexities and issues when it comes to monitoring compliance with DBE contract goals or other aspects of the Federal DBE Program.

FEDERAL REGULATIONS

The Federal DBE Program and alternative delivery method projects operate within the framework of federal regulations for U.S.DOT-funded transportation projects.

Federal DBE Program

The federal government requires state and local governments to implement the Federal Disadvantaged Business Enterprise (DBE) Program if they receive certain U.S.DOT funds for transportation projects. State departments of transportation have been implementing some version of the Federal DBE Program since the 1980s. After enactment of the Transportation Equity Act for the 21st Century in 1998, U.S.DOT established a new Federal DBE Program to be implemented by state and local agencies that receive U.S.DOT funds. The regulations were most recently amended on November 3, 2014, after previous revisions in 2011 (49 CFR Part 26).

The objectives of the Federal DBE Program, as outlined in Title 49 of the Code of Federal Regulations (CFR) Section 26.1, include these:

- (a) “To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department’s highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department’s DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part’s eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.” (49 CFR Part 26)

DBE Contract Goals

The federal regulations in 49 CFR at Part 26 guide how state and local governments operate the Federal DBE Program. If necessary, under the federal regulations, the program allows state and local governments to use DBE contract goals, which agencies might set on certain U.S.DOT-funded contracts. In awarding those contracts, in accordance with federal regulations, the state DOT considers whether or not a bidder meets the DBE contract goal or shows good faith efforts to do so.

The Federal DBE Program also applies to cities, counties, transportation authorities, and other jurisdictions that receive U.S.DOT funds through state DOTs.

A state DOT typically receives funds from multiple operating administrations of the U.S.DOT, including FHWA, FTA, and FAA. The state DOT must implement the Federal DBE Program for funds received from each operating administration. For exact language concerning sources of funds that trigger application of the program, see 49 CFR Section 26.3. Note that these Federal DBE Program regulations do not apply to funds received through the U.S.DOT FRA.

As outlined in 49 CFR Part 26, for each operating administration, there may be two types of DBE goals that a state DOT sets regarding the projects funded in full or in part from that agency:

- A state DOT’s overall annual goal, set every three years, for DBE participation for contracts funded in whole or in part from that U.S.DOT operating agency (e.g., FHWA); and

- As necessary, individual DBE contract goals for all or a subset of contracts funded in whole or part from that operating agency (e.g., FHWA-funded contracts).

A state DOT or other agency can also set a project-level goal for DBE participation for the length of the project (similar to its overall annual DBE goal but for a specific project). DBE goals would then be established for specific contracts involved in that project [49 CFR Section 26.45 (e)(3)]. This is sometimes done for U.S.DOT-funded megaprojects.

U.S.DOT allows local governments that receive FHWA or FTA funds through a state department of transportation to follow that state DOT's implementation of the Federal DBE Program (U.S.DOT 2014). In other words, the state DOT establishes how cities, counties, and other sub-recipients implement the Federal DBE Program for contracts using FHWA funds received through that state DOT.

DBE contract goals are only one of the ways state DOTs and other agencies meet their overall goals for DBE participation. Application of DBE contract goals to alternative delivery method projects is the subject of this synthesis.

The Federal DBE Program, 49 CFR Section 26.51 (d–g), instructs state DOTs and other federal aid recipients on the use of DBE contract goals. Regulations provide that—

- An agency can use DBE contract goals to the extent that they are needed to help it meet its overall DBE goal for that year. If the agency can meet the overall goal solely through race-neutral means, the regulations provide that it not set DBE contract goals during that year. [49 CFR Section 26.51 (f)(1)]
- Agencies are not permitted to use quotas for DBEs on U.S.DOT-assisted contracts. [49 CFR Section 26.43 (a)]
- Agencies may use contract goals only on those U.S.DOT-assisted contracts that have subcontracting possibilities. [49 CFR Section 26.51 (e)(1)]
- Contract goals may be higher or lower than the overall annual DBE goal for the agency, depending on factors such as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. [49 CFR Section 26.51 (e)(1)]
- Operating administrations (e.g., FHWA) do not need to approve each contract goal but may choose to review and approve or disapprove any contract goal established. [49 CFR Section 26.51 (e) (3)]

The Federal DBE Program requires agencies to use race-neutral efforts to assist DBEs and small business enterprises in general and to further the development of minority- and women-owned businesses. Race-neutral initiatives identified in 49 CFR Section 26.51 are included in the following list. DBE contract goals are used only to meet any portion of an agency's overall DBE goal that cannot be met using race-neutral means [49 CFR Section 26.51(d)].

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Source: 49 CFR 26.

Portions of 49 CFR Part 26 Specific to Alternative Delivery Methods

Federal regulations in 49 CFR Sections 26.39 and 26.53 contain the following requirements for alternative delivery projects:

- To foster small business participation on multi-year design-build contracts or other large contracts (e.g., for megaprojects) as part of this program element, recipients may include the strategy that bidders on the prime contract are required to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform. [49 CFR Section 26.39 (2)]
- State DOTs receiving federal funds for use on a design-build project may establish a goal for the project. (In addition to design-build, this section also refers to “turnkey” contracts.) The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. State DOTs maintain oversight to ensure that the contractor’s activities are consistent with federal DBE requirements. [49 CFR Section 26.53 (e)]

Other Federal Regulations Governing Alternative Delivery Method Contracts

Title 23 Part 636 of the CFR covers FHWA’s policies concerning the use of design-build for certain FHWA-funded contracts. The regulations include guidance on how agencies receiving FHWA funds can use nonprice factors to evaluate proposers on design-build contracts. In the regulations, design-build is broadly defined to include design and construction by a private developer, concessionaire, or other entity that might then operate or maintain the improvement.

Title 23 Section 635.107 covers regulations concerning participation of DBEs on design-build contracts. These regulations cite 49 CFR Part 26 concerning use of the Federal DBE Program for design-build contracts. FHWA comments on this requirement strongly urge state transportation departments to modify their overall DBE program plans to include provisions for design-build contracts and note that state DOTs have flexibility in structuring these processes (FHWA 2002).

The only additional restriction in Section 635.107 is that DBE commitments above the DBE contract goal for a design-build project cannot be used as a proposal evaluation factor. As discussed in chapter four, state DOTs retain flexibility as to other evaluation scores related to DBE commitments or plans.

STUDY APPROACH

The study involved an extensive literature review followed by in-depth interviews with state DOTs, U.S.DOT staff, contractors and consultants, DBEs, and trade organizations.

Review of Published Literature, State DOT Documents, and Other Sources

Study team members began by examining journal articles and other literature concerning the use of alternative deliv-

ery methods in the United States, including past NCHRP syntheses. State statutes were reviewed to identify legislation permitting or prohibiting the use of alternative procurement methods for horizontal construction projects. A review of state DOT websites, RFP documents, DBE program manuals, and alternative procurement manuals was conducted. Individual state websites were evaluated to gain an understanding of the status of alternative procurement methods in each state.

Interviews with State DOTs

All 50 states plus the District of Columbia and Puerto Rico were contacted for in-depth interviews. Interviews were completed with 47 of the 52 state DOTs, a 90% response rate (see Figure 1 for a list of the state DOTs that completed interviews). Although state DOT representatives from Iowa, Louisiana, Maryland, Massachusetts, and Washington, D.C., were not successfully reached for an interview, other information for these state transportation departments was accessed.

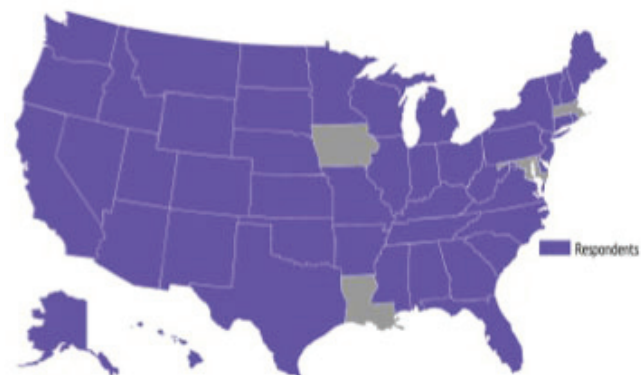


FIGURE 1 In-depth interview respondents from state DOTs.

In-depth interview discussion topics included the following:

- Authorization for alternative delivery methods;
- Use of alternative procurement, including design-build, CMAR/CMGC, and P3;
- Application of the Federal DBE Program on alternative procurement projects;
- Sub-recipient use of alternative procurement; and
- Any challenges in goal setting, monitoring, and compliance.

Interviews with 42 state DOTs included a member of the team responsible for the DBE program for that state DOT. The remaining six state DOT interviews were conducted with representatives from bid letting, contract compliance, contract awards, construction management, project management, and legal departments. Some interviews also included other engineering or contracting staff, and one included the FHWA regional staff person for the DBE program. A copy of the interview guide is included in Appendix A.

Four U.S.DOT staff, five contractors and consultants, two DBE representatives, and two trade organization representatives were also interviewed.

LIMITATIONS

Many of the methods for applying DBE contract goals on alternative delivery method projects identified in this study were developed very recently, so more will be known about their success once the projects awarded under the new methods are complete. This may take two years or more. It will be longer still before new approaches to applying DBE contract goals to operational phases of P3 projects can be evaluated.

A further limitation is that staff interviewed from state DOTs were not always knowledgeable about application of DBE contract goals to previous alternative delivery projects in their states. The interview information was often supplemented by other reviews of a state DOT's practices. Where information from the interviews was inconsistent with documents for that state DOT or past research studies, an attempt was made to clarify those discrepancies. Even with these steps, it is possible that some of the information in the report that came from interviews is not fully accurate.

As this study focuses on application of DBE contract goals for alternative delivery method projects, DBE contract goals methods for traditional design-bid-build projects are discussed only as they are applied to design-build, CMAR/CMGC, and P3 projects. Much more could be learned about the variety of ways state DOTs use DBE contract goals for traditional design-bid-build projects, from goal-setting methodology through electronic tracking systems.

One of the cautions in using the research is that U.S.DOT may not approve of some aspects of the new methods in use. Some state DOTs discovered that the practices they initially developed had to be revised to meet federal regulations. Current practices of state DOTs that might require refinement are noted. It is important that state DOTs not regard all practices in place to have been endorsed by U.S.DOT.

OVERVIEW OF THE REPORT

The report comprises six chapters:

- State DOTs that have used design-build, CMAR/CMGC, and P3 alternative delivery methods were identified. Chapter two summarizes these results.
- Some state DOTs apply DBE contract goals to design-build projects in the same way they do for traditional design-bid-build projects. Chapter three reviews the experience of these states.
- Many states have deviated from traditional approaches for implementing DBE contract goals for alternative delivery method projects. Chapter four describes these new approaches.
- Chapter five reviews state DOTs' experience with DBE contract goals on CMAR and CMGC projects.
- Chapter six summarizes the study conclusions.

Several appendices, as well as a list of references and a bibliography, provide supporting information.

CHAPTER SUMMARY

The federal government requires state and local governments to implement the Federal Disadvantaged Business Enterprise Program if they receive certain U.S.DOT funds for transportation projects. State departments of transportation have been implementing some version of the Federal DBE Program since the 1980s.

Federal regulations and years of state DOT implementation of DBE contract goals govern how these goals are applied to design-bid-build contracts. In contrast, there are few federal regulations specific to the application of DBE contract goals to alternative delivery method projects. To determine whether states have adapted their standard application of contract goals for alternative delivery method projects, state DOTs were studied through a review of past research, compilation of documents relevant to state DOT practices, in-depth interviews with state DOT staff and others, and follow-up research. Information concerning the use of alternative delivery methods was obtained for every state, and interviews were completed with staff of nearly every state DOT.

CHAPTER TWO

USE OF ALTERNATIVE DELIVERY METHODS BY STATE DEPARTMENTS OF TRANSPORTATION

State transportation departments were contacted and existing information for state DOTs that have used design-build, CMAR/CMGC, and P3 alternative delivery methods was reviewed.

DESIGN-BUILD

Many state transportation departments have made some use of design-build contracting methods for more than two decades (FHWA 2006).

SEP-14

In 1990, FHWA established the Special Experimental Projects Number 14 (SEP-14) program to evaluate innovative contracting practices undertaken by state DOTs. State DOTs were interested in using new methods for cost and time savings and more efficient project delivery. The SEP process enables both federal and state transportation agencies to test and evaluate innovative contracting techniques that would otherwise be prohibited under current federal statutes and regulations. FHWA reports that between 1990 and 2002, about 300 projects representing \$14 billion were proposed for design-build contracting under SEP-14 by transportation agencies (including state transit authorities, toll agencies, and local public agencies) in 32 states and the District of Columbia (FHWA 2006).

Florida, Michigan, Ohio, and Pennsylvania had the largest number and dollar volume of design-build projects authorized under the SEP-14 program (FHWA 2006).

1998 TEA-21 and 2002 Final Rule

After a decade of evaluation under the SEP-14 program, design-build was designated as an operational (i.e., non-experimental) technique. The 1998 Transportation Equity Act for the 21st Century (TEA-21) amended federal regulations to allow the use of design-build contracting methods and required U.S.DOT to issue regulations to allow design-build contracting for certain U.S.DOT-funded projects. In 2002, FHWA published a Final Rule regarding design-build contracting (FHWA 2002). State DOTs were allowed to use design-build at their option but were not required to do so. The rule established design-build contracting projects as

eligible to receive federal aid without special consideration. The rule was amended in 2007 (FHWA 2007).

At the time of this report, 45 states plus the District of Columbia and Puerto Rico have used design-build as a delivery method for state DOT projects (see Figure 2). As other researchers have found, this count is fluid and depends somewhat on one's definition of "using design-build."

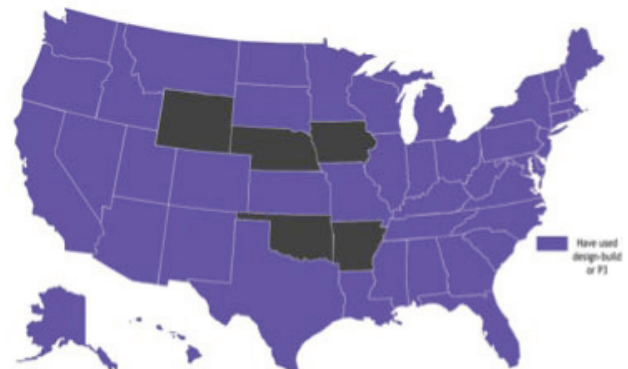


FIGURE 2 State DOTs that have used design-build or P3 as a delivery method (FHWA 2012b; Shakya 2013; Gransberg 2013b).

Nebraska is prohibited from using design-build on road, street, and highway projects. In Oklahoma, design-build is not authorized without special approval. Iowa does not have legislation specifically authorizing the use of design-build for highway projects but can apply the method for emergency procurement. Wyoming and Arkansas have legislative authority to use design-build but have never used the method.

A number of state DOTs, including New Jersey, North Dakota, Puerto Rico, and Wisconsin, have employed design-build methods in the past (especially under SEP-14) but have discontinued the use of design-build as a delivery method. (Puerto Rico reports that it may use design-build again.)

PUBLIC-PRIVATE PARTNERSHIPS

State transportation departments can select developers for public-private partnership projects using low bid methods, but P3 projects are considered to be in the family of design-build contracting methods, as they often involve design, construction, and eventual operation of a transportation

improvement. The evolution of federal regulations regarding P3 largely follows that of design-build contracting. For example, federal regulations concerning “public-private agreements,” such as FHWA’s 2007 Final Rule on Design-Build Contracting, are often included under those for design-build contracts (FHWA 2007).

At the time of this report, legislation authorizing the use of P3 as a delivery method was identified for 33 states, Puerto Rico, and the District of Columbia through the in-depth interview and literature review process. Legislative authority for P3 includes broad enabling legislation and limited (project-specific or authorization by regulation) legislation (see Figure 3).

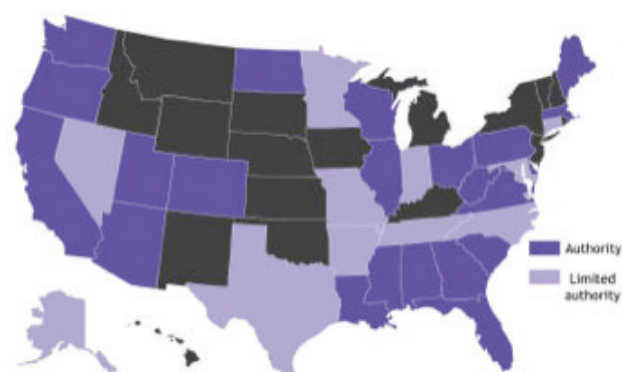


FIGURE 3 State DOTs with legislative authority to use P3 (Rall 2013).

CONSTRUCTION MANAGER AT RISK AND CONSTRUCTION MANAGER/GENERAL CONTRACTOR

Construction manager at risk and construction manager/general contractor are similar alternative delivery methods that involve using a construction manager in the design stage that becomes the general contractor in the construction phase (see chapter one definitions).

SEP-14

SEP-14 also allowed the use of CMAR and CMGC methods. Until July 2012, when the Moving Ahead for Progress in the 21st Century Act (MAP-21) was signed into law, FHWA allowed state DOTs to use CMAR/CMGC delivery methods only under the SEP-14 program (FHWA 2014a; FHWA 2014d).

MAP-21

Section C of MAP-21 is dedicated to the acceleration of project delivery. In order to develop the most effective practices to accelerate project delivery and reduce costs, the law amended 23 U.S.C. 112(b), which regulates bidding on federal highway projects, to allow the use of CMAR/CMGC (FHWA 2014a; FHWA 2014d).

As shown in Figure 4, 35 states plus the District of Columbia and Puerto Rico have some legislative authority to use CMAR/CMGC on state DOT projects (FHWA 2012a; Gransberg 2013a, Shakya 2013). Arizona, Colorado, Florida, Maine, Michigan, Minnesota, Nevada, Oregon, and Utah have CMAR/CMGC experience. At the time of this report, California was in the initial phase of two CMGC projects. Massachusetts Bay Transportation Authority (a division of Massachusetts DOT) and Rhode Island DOT have used CMGC on rail projects.

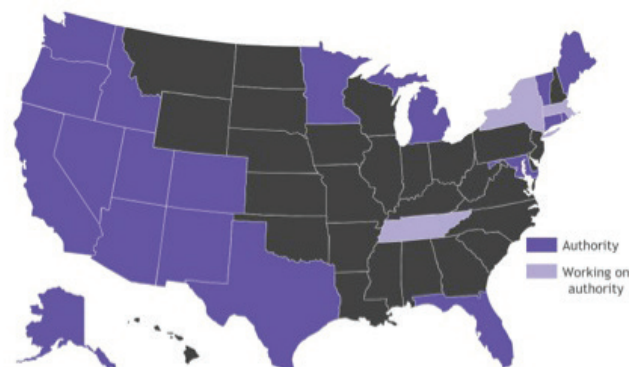


FIGURE 4 State DOTs with legislative authority to use CMAR/CMGC (FHWA 2012a; Gransberg 2013a; Shakya 2013).

CHAPTER SUMMARY

Most states have experience with alternative delivery method projects. At the time of this report, 45 states plus the District of Columbia and Puerto Rico had used design-build as a delivery method for state DOT projects. Legislation authorizing the use of P3 as a delivery method was identified for 33 states, Puerto Rico, and the District of Columbia through the in-depth interview and literature review processes. Thirty-five states plus the District of Columbia and Puerto Rico have some legislative authority to use CMAR/CMGC on state DOT projects. The CMAR/CMGC experience of nine state DOTs were reviewed.

CHAPTER THREE

APPLICATION OF TRADITIONAL DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS TO ALTERNATIVE DELIVERY METHOD PROJECTS

Interviews were conducted with nearly every state DOT, and other information was obtained for the few state DOTs that did not participate in interviews. Based on this research, 33 of the 48 state transportation departments that appear to have used design-build or P3 methods have applied DBE contract goals to those types of projects.

Table 1 provides detailed information for 50 states, the District of Columbia, and Puerto Rico. Based on telephone interviews and other information sources, the first two columns indicate whether the state DOT had used design-build or P3 methods. For the 48 state DOTs that had, the next three columns present information about use of DBE contract goals on any of those projects. Eight state DOTs had not set DBE contract goals on design-build or P3 projects, and use of DBE contract goals on past projects was unclear for seven state DOTs. These 15 state DOTs are discussed here:

- The Alaska Department of Transportation and Public Facilities (ADOT&PF) does not set a DBE contract goal if the contract is less than \$1 million. ADOT&PF reported that it has not had a design-build project in which DBE contract goals were applied in the past 5 years.
- Puerto Rico's design-build project did not receive any federal funds, so it did not use DBE contract goals.
- Florida, Idaho, Maine, New Hampshire, and Vermont have 100% race-neutral DBE programs. North Dakota completed two pilot design-build projects that were considered race-neutral projects. State DOTs with 100% race-neutral DBE programs do not apply DBE contract goals to any contracts, regardless of whether they are alternative delivery method or design-bid-build.
- Iowa DOT may have used design-build for emergency projects in the past, but the use of DBE goals on emergency projects could not be determined.
- Alabama, New Jersey, South Dakota, and Wisconsin DOTs completed design-build projects under the SEP-14 program, but current DBE staff were not involved at the time of the SEP-14 projects and were unable to report on the use of DBE contract goals. These states have discontinued the use of alternative delivery methods.
- The interviewee from Montana DOT reported that the state DOT does not set DBE contract goals on its design-build projects. However, the MDT design-build guidelines suggested that it had (Montana DOT 2008).

Many of the state DOTs that apply DBE contract goals to alternative delivery projects began by closely adhering to long-established methods used for their design-bid-build projects. Five of the 33 state DOTs that apply DBE contract goals to design-build and P3 projects appear to retain that approach, as shown in Table 2.

Chapter three describes the steps in the traditional methods to applying DBE contract goals, from identification of the project to sanctions for noncompliance. This discussion provides the context for the chapter four examination of how state DOTs have developed new approaches to DBE program application. Also, states that have developed new approaches typically retain certain aspects of traditional methods.

EXAMPLES OF STATES APPLYING TRADITIONAL METHODS

State transportation departments in Delaware, Indiana, Mississippi, Pennsylvania, and Tennessee apply DBE contract goal methods from design-bid-build projects to their design-build and P3 projects. Alaska DOT&PF reports that it plans to use this approach for future alternative delivery method projects.

Indiana DOT

In its proposals for design-build projects, Indiana DOT (INDOT) requires proposers to meet the DBE contract goal or show good faith efforts to do so. Proposers must show DBE commitments at that time. INDOT evaluates on a pass-fail basis whether the proposer has complied with the DBE requirements. This parallels INDOT's process for design-bid-build projects.

Pennsylvania DOT

Pennsylvania DOT (PennDOT) is an example of a large state DOT with substantial design-build experience that applies traditional DBE contract goals to design-build and P3 contracts. Under SEP-14, PennDOT had more than 50 design-build projects approved. Pennsylvania was one of the four major states participating in the program, as discussed in chapter two.

TABLE 1
USE OF DBE CONTRACT GOALS FOR DESIGN-BUILD OR P3

	Have Used D-B or P3		If Used D-B or P3, Applied DBE Contract Goals		
	Yes	No	Yes	No	Unclear
Alabama	•				•
Alaska	•			•	
Arizona	•		•		
Arkansas		•			
California	•		•		
Colorado	•		•		
Connecticut	•		•		
Delaware	•		•		
District of Columbia	•				•
Florida	•			•	
Georgia	•		•		
Hawaii	•		•		
Idaho	•			•	
Illinois	•		•		
Indiana	•		•		
Iowa	•				•
Kansas	•		•		
Kentucky	•		•		
Louisiana	•		•		
Maine	•			•	
Maryland	•		•		
Massachusetts	•		•		
Michigan	•		•		
Minnesota	•		•		
Mississippi	•		•		
Missouri	•		•		
Montana	•				•
Nebraska		•			
Nevada	•		•		
New Hampshire	•			•	
New Jersey	•				•
New Mexico	•		•		
New York	•		•		
North Carolina	•		•		
North Dakota	•			•	
Ohio	•		•		
Oklahoma		•			
Oregon	•		•		
Pennsylvania	•		•		
Puerto Rico	•			•	
Rhode Island	•		•		
South Carolina	•		•		
South Dakota	•				•
Tennessee	•		•		
Texas	•		•		
Utah	•		•		
Vermont	•			•	
Virginia	•		•		
Washington	•		•		
West Virginia	•		•		
Wisconsin	•				•
Wyoming		•			
Total	48	4	33	8	7

TABLE 2
USE OF NEW OR TRADITIONAL METHODS FOR DESIGN-BUILD OR P3 PROJECTS

States That Have Applied DBE Contract Goals to D-B or P3 Projects	Use Same Methods as for Design-Bid-Build Projects	Always or Sometimes Use New Methods
Arizona		•
California		•
Colorado		•
Connecticut		•
Delaware	•	
Georgia		•
Hawaii		•
Illinois		•
Indiana	•	
Kansas		•
Kentucky		•
Louisiana		•
Maryland		•
Massachusetts		•
Michigan		•
Minnesota		•
Mississippi	•	
Missouri		•
Nevada		•
New Mexico		•
New York		•
North Carolina		•
Ohio		•
Oregon		•
Pennsylvania	•	
Rhode Island		•
South Carolina		•
Tennessee	•	
Texas		•
Utah		•
Virginia		•
Washington		•
West Virginia		•
Total	5	28

PennDOT closely follows its methods for design-bid-build contracts in applying DBE goals to design-build projects. It uses a single DBE contract goal on design-build projects. The only difference is a minor one: on a traditional design-bid-build project, the goal is set by the manager of the Contract Awards Office; on design-build projects, the manager of the Contract Awards Office works with his or her counterpart in the Consultant Agreements Office to set the contract goal. PennDOT sub-recipients have also used federal funds to do design-build projects.

The first P3 project in Pennsylvania is set to begin soon, and PennDOT has applied traditional DBE contract goals to this project.

Staff at PennDOT reported that keeping the process simple is a highly effective strategy for applying DBE goals to design-build projects.

Delaware DOT

Delaware is an example of a small state that has substantial design-build experience. The Delaware DOT (DelDOT) has legislative authority for both design-build and P3 projects. The legislature approved 12 design-build pilot projects in 2011, and the state has nearly reached the 12-project limit, including a vertical construction project (DMV facility). No P3 projects had been initiated at the time of the interview.

DelDOT gives the apparent awardee 10 days after submitting its proposal to provide a letter of commitment, which includes a list of the subcontractors and DBE firms it intends to use. A signed contract for all DBEs (which must include information on the value of the contract) must be submitted by the prime contractor before groundbreaking.

The difficulty DelDOT reported concerning its design-build projects was that it has not been able to use its standard electronic tracking system to monitor payments. Instead, prime contractors must manually submit DBE invoice and payment information to the DBE program manager.

Mississippi DOT

Mississippi DOT (MDOT) has experience with three design-build projects. One is complete, and two are in process. Design-build projects are handled and monitored the same way as typical design-bid-build projects. A single goal is set for the entire project, and it can be achieved during the design or construction phase. The winning proposer is given 10 days after letting and award to provide a complete DBE list, which includes DBE names, work types, and work values for the project. MDOT reports that it has not encountered any problems treating design-build like design-bid-build, and DBE contract goals have been achieved or are on track.

Tennessee DOT

Tennessee DOT (TDOT) completed one design-build project under the SEP-14 program and has had five design-build projects since authorizing legislation was passed in 2007. The state also has legislation allowing a two-project pilot program for P3 tollway projects, but no P3 projects have been initiated at this time.

The TDOT civil rights/DBE program staff do not become involved in the design-build project until the

design phase is complete. They do not take part in RFQ/RFP development or the selection process. A single goal is set for the construction phase once the design phase is complete. At that point, the project is treated like a typical design-bid-build project.

APPLYING DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS USING TRADITIONAL METHODS

Starting with identification of the project, application of DBE contract goals using traditional methods can be broken into seven stages:

1. Identifying the design-build project as appropriate for DBE contract goals;
2. Incorporating DBE program language and related requirements in RFQ, RFP, and contract documents;
3. Communicating opportunities to DBEs and other small businesses;
4. Establishing a DBE goal for the project;
5. Reviewing DBE proposal submissions when determining contract award;
6. Monitoring compliance; and
7. Remediating any noncompliance.

The discussion of each stage includes an assessment in chapter four of whether a method is still used with the new approaches.

1. Identifying the Design-Build Project as Appropriate for DBE Contract Goals

The first step in applying DBE contract goals is for engineering staff to inform DBE program staff about a planned project that will receive federal funding. DBE program staff in state transportation departments say that the earlier they learn of a project, the greater the opportunity to ensure that steps are properly followed. This is especially important for megaprojects or other unusual projects.

This step is the same for states that are applying traditional methods and new approaches to DBE contract goals on design-build projects, so some of the examples pertain to state DOTs beyond the five using traditional methods. Some state DOTs have early notification written into their design-build manuals. For example, the NYS-DOT design-build manual requires that “the Office of Civil Rights (OCR) must be consulted early in the process to create the goals for the project and on an on-going basis

during the project for oversight and monitoring of the design-builder's MBE/WBE [minority business enterprise/women's business enterprise] or DBE program" (NYSDOT 2011).

Sometimes there is not a close working relationship or substantial advance communication between staff planning future projects and DBE program staff, who are most directly responsible for implementing the Federal DBE Program. Interviews with several state DOTs found that staff responsible for the DBE program learned of and became involved in projects relatively late in the process. They were frustrated that they were being left out of the loop.

DBE program staff from some state DOTs reported the lack of an agency-wide understanding and commitment to effectively implement the Federal DBE Program. For example, some reported a just-check-the-box attitude in other divisions toward the DBE program. They noted that the commitment to effective use of the program must be in place from the beginning of a project, regardless of whether it is a design-bid-build or alternative delivery project.

In some state DOTs, engineering staff responsible for planning design-build projects are separate from staff handling design-bid-build projects. Additionally, alternative delivery projects are relatively new in some states. In these instances, the alternative project delivery staff and DBE program staff may need to build strong relationships from scratch.

2. Incorporating DBE Program Language in RFQ, RFP, and Contract Documents

Step 2 in the DBE contract goals process applies regardless of whether a state DOT applies a traditional or new approach. However, according to interviewees, it can be more challenging to incorporate appropriate contract language for states with new approaches, as these materials must be developed from scratch.

Sample RFP Language

States using a traditional approach use the same or very similar DBE program language in the RFQ, RFP, and contract documents as they use for design-bid-build projects.

The traditional method for using DBE contract goals requires the proposer to meet a specific percentage DBE participation goal, or show good faith efforts to do so, at or near the time of proposal. For example, the RFP for a DelDOT design-build project contained the following paragraph:

A DBE participation goal of seven percent (7%) has been established for this project. The design-builder is required to make good faith efforts to involve Department-certified DBE professional service and construction firms in the prosecution of the work. (DelDOT 2012, p. 27)

When a DBE goal is set for a U.S.DOT-funded contract, federal regulations require that solicitations for that contract communicate that a bidder or proposer has an opportunity to comply with the program either through meeting the goal or showing good faith efforts to do so. These and other solicitation requirements for traditional design-bid-build contracts are listed in 49 CFR Section 26.53 (b).

Contract Language

Interviewees from states and FHWA were emphatic that DBE program requirements be clearly and comprehensively spelled out in all RFQ, RFP, and contract documents. Based on the review of documents in this study, states that implement DBE contract goals in the same way as they do design-bid-build projects use the same or very similar contract language for both.

Advice from Interviewees Concerning RFP, RFQ, and Other Contract Language

Several of the interviewees advised state DOTs to develop all DBE language for the RFQ, RFP, and contracts at the outset of the design-build procurement process. For example, the NYSDOT civil rights director urged other DOTs to include clear DBE contract language to ensure contractor compliance, because dealing with contractors requires referring to the contract documents.

An FHWA regional official with design-build experience advised state DOTs to develop the contract document before the RFP goes out. He cautioned that the size and complexity of alternative delivery projects means that state DOT staff and the contractor are less likely to think about DBE issues. The official observed that vague or nonexistent contract language can lead to difficulties implementing the DBE program. He advised state DOTs to include monitoring requirements in the contract, including language related to reporting, deadlines, dedicated point of contact, and sanctions for noncompliance.

Inclusion in contracts of requirements concerning DBE contract goals is also specified in the federal regulations (see, for example, 49 CFR Section 26.53). The federal regulations do not provide the specific DBE language for the solicitation but do include certain requirements.

A related requirement is for state DOTs to include procedures used for design-build projects in their overall DBE program plans (FHWA 2002).

3. Communicating Opportunities to DBEs and Other Small Businesses

Especially for large projects, state transportation departments begin outreach to the contracting community,

including DBEs, long before requests for qualifications or proposals are released. For megaprojects, outreach might be a year or more before contractors are developing proposals, according to state DOTs. This step in the process is the same for states using either traditional methods or new methods to apply DBE contract goals to design-build projects.

Based on interviews across state departments of transportation setting DBE contract goals, state DOTs might start by holding a series of meetings explaining the project and contract opportunities (such as Minnesota DOT's meet-and-greets for short-listed proposers and potential subs/DBEs). The Ohio DOT continues outreach in partnership with the design-build team through the design phase.

Several interviewees noted that the need for advance outreach is one reason why it is important that DBE program staff learn about upcoming alternative delivery method projects, especially large ones, early in their planning. One interviewee from a civil rights division reported that they have learned that more collaboration is needed between civil rights and other divisions at her state DOT. They could be partners in outreach activity and collaborate on monitoring.

Communication issues exist for states with traditional approaches and those with new methods for applying DBE contract goals. Chapter four provides examples of new approaches.

4. Establishing a DBE Goal for the Project

States set DBE contract goals using methods that are similar to those used for design-bid-build contracts but with less information. As with other steps in the process, contract goal-setting did not vary between states that follow traditional approaches to applying DBE contract goals and those with new approaches.

Single Goal for Design-Build

State transportation departments were asked whether they set a single DBE goal for the entire project or one goal for design and a separate goal for construction. Among the five states using traditional approaches—

- One (Delaware) sets separate DBE contract goals for the design and construction portions of a design-build contract;
- Three (Indiana, Mississippi, and Pennsylvania) set a single DBE contract goal that combines design and construction; and
- One (Tennessee) sets a single DBE contract goal that pertains only to construction.

Including state DOTs that use new methods for DBE contract goals, 21 of the 33 states that set DBE goals on design-

build projects use a single DBE contract goal that combines design and construction.

Information at Time of Goal-Setting

Although information is limited, there are usually some planning-level cost estimates for the work when a goal for a design-build project needs to be established. For example, Caltrans staff reported that when setting a DBE contract goal on a design-build project, they might be working with only 30 general bid items, compared with 200 items on a typical design-bid-build project, which made goal-setting difficult.

Nevertheless, state DOTs reported that they were able to set DBE contract goals on design-build projects. Only one state DOT interviewed reported that it did not apply DBE contract goals on design-build projects because of insufficient information to calculate those goals.

Methods for Calculating a DBE Contract Goal

According to state DOTs, when they are determining the level of the goal, they typically consider the sizes and types of work involved, location within the state, and availability of DBEs (and sometimes other firms) to perform that work.

State DOTs reported that they apply the same process for DBE goal-setting for design-build contracts as they do for design-bid-build projects, just with less refined information. No interviewees indicated that they had developed a substantially different approach for these projects. Two general approaches were identified through interviews and review of available documentation.

One approach, Virginia DOT's goal-setting process, assesses whether there would be competition among DBEs (not just one DBE in the discipline) for each area of work. If there is competition, VDOT considers that item as "possible for DBEs." It considers the number of projects going on in a particular area and whether DBEs would be able to work on an additional project. VDOT also examines past projects in that geographic area, the goals that were set, and whether they were reached. After developing a percentage figure through these methods, VDOT cuts the amount in half to set the project goal. VDOT then reviews the proposed goal internally. Revisions can occur at any stage before contract award.

Caltrans uses a similar approach. According to interviews with Caltrans, the standard DBE goal-setting process applies when developing a DBE contract goal for design-build contracts, with certain constraints. In its standard process, Caltrans identifies work items likely to be performed by the prime contractor and then reviews remaining items for subcontractor work. It determines how many DBEs appear to match those items based on types of work and project location. If there are only a few DBEs available for an item, Cal-

trans does not count that work area in the DBE contract goal calculation. Caltrans then applies certain discounts (e.g., for supplies or trucking). It can set a goal of zero percent if the amount of work that can be subcontracted is negligible or the availability of DBEs for that work is minimal. Finally, Caltrans applies an overall discount factor adjusting the DBE contract goal. The major difference for design-build contracts is that Caltrans staff might be working with 30 general bid items for design-build, compared with 200 items on a typical design-bid-build contract.

At the time of this report, Arizona DOT (ADOT) was an example of a state DOT that uses a somewhat different contract goal-setting system. Like other states, ADOT starts with dollar estimates by work areas. It also screens to ensure that a minimum number of DBEs (three) are available for a work item before that item can be counted toward a DBE contract goal. It then matches DBEs and other firms to each work item and develops a percentage of available firms that are DBEs for each item (by dividing DBEs by total firms available for that item). The percentage goal is determined by multiplying the DBE percentages for each work item by the dollars for the work item, totaling results, and dividing by the total contract value. (Although this study did not delve into the DBE goal-setting process of each state DOT, this approach appears to be uncommon and, according to an FHWA representative, is not endorsed by FHWA.)

Challenges in Setting a DBE Contract Goal for a Design-Build Project

Several state DOTs reported that there is much less information to set a DBE contract goal for a design-build contract than for a design-bid-build contract. For example, Caltrans reported that lack of complete information is a difficulty in setting DBE contract goals (estimates for 30 cost items rather than 200).

Beyond challenges associated with less-detailed estimates, a few states noted difficulty in factoring in the effect of concurrent projects in a region, especially given the length of a large design-build project. For example, NYSDOT expressed concern over the lack of a mathematical formula to alter the goals based on other concurrent FTA, FAA, and FHWA projects in the area. This was especially evident after Hurricane Sandy. This state DOT also reported that most design-build projects have a longer duration, which makes it more difficult to set a goal appropriate for future contracting work.

Interviews with state DOTs indicated that they approach such challenges in the same way for design-build and design-bid-build projects.

Review of Initial Calculations

State DOTs that use formulas or programs to calculate an initial DBE goal usually have an opportunity to adjust the

goal based on staff review. Often teams of staff members, including professionals outside a civil rights division, contribute to this goal-setting process. For example, Michigan DOT includes representatives from many different offices within the DOT that review individual project goals. A committee chair has the authority to set the final contract goal (and to set a goal without committee review when there is a tight deadline).

Range of Goals

When asked about the range of goals on design-build projects, state departments of transportation gave a wide range (2% to 15% or more). The Federal DBE Program does not require that a DBE contract goal be established for every U.S.DOT-funded contract. For example, on one design-build project, Utah DOT determined that the goal would be zero percent, so it did not set a DBE contract goal. This is allowed under the DBE program.

A few interviewees from state DOTs reported community or political pressure to set a particularly high goal. A number of interviewees reported that a standardized goal-setting process, with internal review mechanisms, helps to consistently set reasonable and achievable DBE contract goals.

On some alternative delivery method projects, the state DOT refines the initial DBE contract goal as more information becomes available on the scope of the work, subcontracting opportunities, and types of supplies and materials needed for the project.

- *North Carolina DOT (NCDOT)*. NCDOT examines contractor feedback about excessive DBE contract goals. For example, if all four bidders say 14% is too high, NCDOT will reconvene the goals committee to review the goal. NCDOT has reexamined DBE contract goals on a few occasions but rarely found a need to change them.
- *Texas DOT (TxDOT)*. TxDOT can adjust a contract goal any time before the contract is signed if the goal was set long before the project was awarded. A goal is rarely adjusted once the project is awarded.
- *Caltrans*. Caltrans may adjust a DBE contract before contract award. For example, Caltrans once increased the DBE contract goal from 10% to 13.5%.

5. Reviewing DBE Proposal Submissions to Determine Contract Award

Evaluation of proposer DBE requirements can be conducted at the RFQ or RFP stage (RFP stage is more common). Under traditional methods, DBE program staff consider whether the proposer has met the DBE contract goal or shown good faith efforts to do so based on information submitted with or near the bid date for the proposal.

- Proposers submit dollar commitments to individually identified DBEs for specific work items; and/or
- Proposers document their good faith efforts to achieve the DBE contract goal if they fall short of the goal.

Either method is an approved way of complying with DBE contract goals under the Federal DBE Program. Proposers are evaluated on a pass-fail basis; they have either met the goal or shown good faith efforts to do so, or they have not. If the state transportation department determines that the proposer is not in compliance, its proposal is rejected. Federal regulations require that the state DOT provide an opportunity for a contractor to appeal this decision through the procedures established by that state DOT. If the proposal is initially found to be in compliance, other proposers have an opportunity to challenge this determination through bid protest procedures established by the agency.

Typically, only those firms with valid DBE certification within that state can be counted toward meeting a DBE contract goal; however, cross-state projects (Kentucky's Ohio River Bridges, for example) allow firms certified in either state to be counted. On the Tappan Zee Bridge project, FHWA granted NYSDOT special permission to allow DBEs certified in any state to be used to contribute toward the DBE goal. In the wake of Hurricane Sandy, with a number of federally funded projects happening concurrently, the agency needed to consider outside DBEs to enable primes to achieve DBE goals.

Required Information About DBEs

Federal regulations provide the flexibility to agencies to allow bidders to submit such information after time of bid (but before contract execution). 49 CFR Section 26.53 (b) covers what the agency requires from the contractor at time of bid or before contract execution:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount for the participation of each DBE firm;
- Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts.

Federal regulations require a state DOT to make sure all information is "complete and accurate and adequately documents the bidder/offeror's good faith efforts" before executing the contract. The DBE commitments are just

that—the contractor must use the DBEs at the indicated dollar amounts unless it requests and receives permission from the state DOT to make changes. DBEs can be added to the contract, but no DBEs can be substituted without good cause and prior written approval from the agency [49 CFR Section 26.53 (f)(1)].

Timing of Required Information

For traditional design-bid-build projects, some state DOTs require all the DBE participation information to be submitted with the bid, while others allow bidders a certain number of days after the bid date to provide the supporting information. Bidders on traditional design-bid-build contracts often complain that it is onerous to require DBE identification and prices at time of bid given the pressures of bid day, and many states give bidders time after the bid date to provide DBE commitments. For example, Mississippi DOT gives proposers 10 days between bid date and award to provide a complete DBE list that includes DBE names, work descriptions, and work values for the project. This requirement is the same as for MDOT's design-bid-build projects. On the other hand, DBEs (and other subcontractors) sometimes complain of bid shopping or bid manipulation if some listing of DBEs (or all subcontractors) is not included with the bid.

Good Faith Efforts

Appendix A to 49 CFR Part 26—Guidance Concerning Good Faith Efforts—requires that a state DOT apply good faith efforts in any situation in which it has established a contract goal. The appendix provides eight general examples of what an agency might consider as part of a bidder's good faith efforts to meet a DBE contract goal. Even with this guidance, the federal regulations recognize that assessment of whether a contractor has made good faith efforts to meet a contract goal is a judgment call based on the evaluation of objective criteria.

As a recipient, it is up to you to make a fair and reasonable judgment [regarding] whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

Who Must Submit Information

Requiring DBE information from all or a subset of contractors is useful for several reasons, including knowing whether other bidders had difficulty meeting the DBE contract goal when

evaluating the good faith efforts of the low bidder or highest rated proposer (49 CFR Part 26, Section V of Appendix A).

Appeals Process

Federal regulations in 49 CFR Section 26.53 (d) provide guidance on an agency's appeals process:

- The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeree failed to meet the goal or make adequate good faith efforts to do so.
- The bidder/offeree must have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- The agency must send the bidder/offeree a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration process is not administratively appealable to U.S.DOT.

6. Monitoring Compliance

As with traditional design-bid-build projects, dollar commitments to specific DBEs are established as part of the contract. State DOT staff monitor whether those DBEs actually receive that work and attain the stated dollar commitment (or evaluate prime contractors' requests to substitute a DBE). After contract award, traditional monitoring methods focus on obtaining and approving subcontracts for DBEs, and monitoring and verifying payments to DBEs. The state transportation department ensures that the DBE goal is met or that the prime contractor has made good faith efforts to do so in performance of the contract. State DOTs also monitor compliance with other requirements, such as commercially useful function (CUF); prompt payment and return of retainage for all subcontractors, including DBEs; and no substitution of DBEs without good cause and written state DOT approval. The state transportation department will also respond to any complaints from DBEs during the course of the contract.

The most common traditional monitoring methods include evaluation of payment forms or other information and conducting onsite visits. Several state DOTs mentioned that design-build projects can be large and involve DBEs as first- and second-tier subcontractors. Monitoring can be challenging. Civil rights staff typically have other monitoring responsibilities on a contract, including certified payroll and other equal employment opportunity (EEO) requirements. Often, a manager in civil rights coordinates work performed by the state DOT's field staff (either civil rights or project delivery staff) or staff of the sub-recipient involved

with the project. Some states, such as Arizona and Utah, provide the tracking tools to the prime contractor.

7. Remediating Any Noncompliance

State DOTs typically use the same remedies for noncompliance in alternative delivery method projects and design-bid-build projects. Both types of projects have similar contract provisions in the event that a contractor fails to meet the DBE goal for the project or cannot show good faith efforts to do so. There are also remedies for other types of noncompliance, including for terminating a DBE subcontract without good cause and prior written approval from the state DOT. Federal regulations require that potential administrative remedies for noncompliance be included in the contract [see 49 CFR Section 26.53 (h)].

Differences in remedies for noncompliance between state DOTs that use traditional methods for DBE contract goals and those that use new methods were not identified.

If the state transportation department concludes that the prime contractor is not making good faith efforts to meet the DBE goal, it may hold meetings with the contractor to address those concerns. Contracts include remedies for noncompliance such as these:

- Withholding payment to the contractor until the situation is resolved (Colorado DOT as one example);
- Finding the contractor to be in breach of contract (a sanction that 49 CFR Section 26.13 requires to be in the contract);
- Contract termination (Nevada DOT); or
- Liquidated damages, often dollar-for-dollar for any unapproved shortfall in the DBE participation (frequently included in contracts). There are variations of liquidated damages. For example, Arizona DOT may reduce the damages to 50 cents per dollar of unobtained DBE participation if it is a first offense and ADOT determines that the failure was an unintentional error or oversight.

Some state transportation departments have remedies that extend beyond the life of the contract, including these:

- Reducing the contract rating, limiting bonding, or reducing bid capacity (Ohio DOT and TxDOT); or
- Probation or suspension from bidding (NCDOT and Virginia DOT).

Florida DOT evaluates contractors on their cumulative efforts regarding DBE participation and, although it indicates that it operates a 100% neutral program, can penalize a contractor if it consistently falls short of the overall annual DBE goal for the state.

The decision to impose sanctions typically involves leadership from civil rights, engineering, and legal divisions.

Note that 49 CFR Sections 26.101, 103, 105, 107, and 109 provide remedies for compliance and enforcement.

CHAPTER SUMMARY

Of the 48 state transportation departments that appear to have used alternative delivery methods, 33 have applied DBE contract goals to those types of projects. Many of the state DOTs that apply DBE contract goals to alternative

delivery projects began by closely adhering to long-established methods used for their design-bid-build projects, but only five appear to have retained that approach.

Chapter three described the seven stages of applying the DBE goals program to a contract using traditional methods. Some state DOTs advise closely adhering to as many of these steps as possible and only varying when necessary. Chapter four describes new approaches to certain steps.

CHAPTER FOUR

NEW APPROACHES FOR APPLYING DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS

Twenty-eight of the 33 state DOTs applying DBE contract goals to design-build contracts have deviated from traditional approaches for implementing the Federal DBE Program for alternative delivery method projects. Chapter four describes variations in frequently used new approaches.

BARRIERS THAT EMERGED WITH APPLICATION OF TRADITIONAL APPROACH TO DESIGN-BUILD

State DOTs and others report that requiring a proposer to make DBE commitments at time of proposal creates a substantial disadvantage to applying a traditional DBE contract goals approach to alternative delivery projects. The state DOTs discussed here provide examples of why many states have adopted new procedures.

Colorado DOT

CDOT initially began applying DBE contract goals to design-build projects by allowing proposers to decide whether to adhere to the traditional practice of submitting commitments to use specific firms or, alternatively, to provide general commitments by work area and explain why they could not identify individual firms. CDOT found that most proposers made specific commitments but then requested many changes between the time of proposal and the actual work.

CDOT reported that prime contractors much prefer a system that requires commitments only for DBE engineering-related firms immediately after contract award and allows them to provide commitments for DBE construction firms closer to when those firms will be used. This method mitigates the issue of changes in DBE commitments between proposal and actual work due to changes in the businesses or the project. For example, on one project, a DBE listed in a \$7 million up-front commitment lost its certification by the time of the work.

New York State DOT

NYSDOT's design-build manual discusses the difficulties of applying traditional DBE contract goals to design-build projects. In design-bid-build projects, the contractor can identify the specific work subcontractors will perform and request binding quotes to perform that work before the time

of bid. However, most subcontractors cannot provide quotes based on an incomplete design, so NYSDOT has modified its procurement documents to request a plan for reaching the applicable DBE contract goal and demonstration of good faith efforts before submittal of the proposal. In addition, contract documents require evidence of continuing compliance to be submitted after contract award. Design-builders secure DBEs as the design for each project component is completed. NYSDOT concludes that this process allows compliance with the Federal DBE Program without placing DBEs and other subcontractors at risk of bidding on incomplete plans (NYSDOT 2011).

South Carolina DOT

Until May 2014, SCDOT used traditional DBE contract goal methods, in which commitments were required at time of proposal. SCDOT was unsatisfied with this approach, as were DBEs and prime contractors. On its new 385/I-85 interchange design-build project in Greenville, SCDOT is requiring proposers to submit a plan for DBE participation at time of proposal and provide DBE commitments within 180 days of project award. According to SCDOT, primes, DBEs, and agency staff have all found this method to be acceptable.

SCDOT reported that it had to reject some proposals for previous design-build projects because proposers failed to meet the DBE contract goals or show good faith efforts to do so. On one project, the director of construction decided to reject all proposals and rebid the project because of one proposer's noncompliance with the DBE contract goals. SCDOT also reported that DBEs sometimes backed out of the commitments they made at contract award because they could not do the work or could not maintain their prices by the time the work came up, which might be two years later. Prime contractors complained that it was hard to provide commitments because so little was known about project design at time of proposal. SCDOT also indicated that many proposers in South Carolina came from out of state and were not familiar with this method for design-build projects.

Utah DOT

UDOT reported that traditional application of DBE contract goals was unsatisfactory for the agency, prime contractors, and DBEs. The DOT found that design-build projects evolved

quickly as the design progressed, which often resulted in changes in subcontract work items. As a result, some commitments that were made early in the proposal period could not be fulfilled, leaving committed DBEs without work.

UDOT now requires proposers simply to commit to meeting the DBE contract goal, or demonstrate that they have made good faith efforts to do so, at time of proposal. For a proposal to be considered, the proposer must select one of those two options, but so far it seems that no proposer has used the second option. Proposers do not need to submit DBE commitments at time of proposal or before contract execution. Instead, the winning proposer must submit DBE commitment prior to use of the subcontractor. UDOT reported that this change substantially improved the process for applying DBE contract goals to design-build contracts.

Caltrans

Caltrans reported more opportunities for a prime contractor to meet the DBE contract goal on a design-build project than a traditional project owing to the size and length of construction time (most are 3–4 years long). To take advantage of these differences, Caltrans modified its approach to using DBE contract goals. Caltrans now requires only a plan for DBE participation from proposers. The selected design-builder then has more time to identify and involve DBEs in the contract. Some design-builders seek out new DBEs and actually help some of them get certification to count toward the DBE goal. A design-build project could allow the design-builder more flexibility to customize work components and develop smaller scopes of work to involve more DBEs.

Virginia DOT

VDOT has traditionally examined compliance on a pass-fail basis at the RFP evaluation stage of a design-build project. Proposers had to meet the contract goal or show good faith efforts. They also had to identify commitments to DBEs. VDOT reported that it tried to get industry to find DBEs up front, but this approach met resistance from design-builders. Design-build teams said that by the time they get to a DBE's work, the DBE might be out of business or working on other jobs.

To find ways to improve its approach to DBE contract goals on design-build projects, VDOT conducted a number of meetings with prime contractors and DBEs. Based on their input and suggestions from VDOT divisions, the department developed a new approach to DBE contract goals that removed the requirement to identify commitments to specific DBEs at time of proposal.

Beginning in February 2014, VDOT changed to a new process (Special Provisions 107.15, which is included as Appendix E to this report). VDOT still requires a statement

that proposers will meet the goal or be able to show good faith efforts at time of proposal. However, it now requires that the design-builder submit a list of DBEs and dollar commitments after contract award.

VDOT initially used this model on its P3 projects and has extended it to design-build projects.

SUMMARY OF NEW APPROACHES, BY STAGE

Table 3 summarizes the key differences for new approaches for each of the seven stages in the process described in chapter three. The balance of chapter four describes the use of new techniques in place of the traditional methods for each stage.

1. Identifying the Design-Build Project as Appropriate for DBE Contract Goals

This step does not vary between states applying traditional methods and those applying new approaches to DBE contract goals on design-build contracts.

2. Incorporating DBE Program Language in RFQ, RFP, and Contract Documents

Inclusion in contracts of requirements concerning DBE contract goals is specified in federal regulations (see, for example, 49 CFR Section 26.53). Incorporating appropriate contract language in the DBE contract goals process can be more challenging for states that use new approaches. Because the processes are new, there is a greater need to include considerable detail concerning the process and expectations of the contractor before receiving qualification statements or proposals.

Appendix B shows the complete DBE provisions for a design-build project in 2013 from North Carolina DOT. Appendix F provides DBE special provisions for design-build projects from Minnesota DOT.

One U.S.DOT staff person pointed out that alternative delivery methods allow state DOTs to ask for things they cannot request in a design-bid-build project. He added that the state DOTs could be working on this additional contract language for all types of alternative delivery projects, including large P3s. He urged state DOTs to be the subject matter expert on DBE contract goals and design-build contracts. He said that the law firms that draw up contracts for design-build projects are sophisticated when it comes to finance but simply copy DBE components from other states; he has seen unrelated program material from one state copied and pasted into contracts for other states.

In its review of the success of a particular design-build project, Colorado DOT advised requesting proposers

TABLE 3
KEY DIFFERENCES FOR NEW APPROACHES TO USING DBE CONTRACT GOALS

Stage in the Process	Traditional Approach to Design-Build and P3	New Approaches to Design-Build and P3	Change from Traditional Approach
1. Identifying the project as appropriate for DBE contract goals	Need to involve DBE program staff early	Need to involve DBE program staff early	No difference
2. Incorporating DBE program language in RFQ, RFP, and contract documents	Need to incorporate DBE language into all documents prior to RFQ	Need to incorporate DBE language into all documents prior to RFQ	Need to create custom language for innovative approach
3. Communicating opportunities to DBEs and other small businesses	Outreach from project identification through proposal date	Outreach from project identification through construction phase	Extended length of outreach
4. Establishing a DBE goal for the project	Set DBE goal based on information prior to RFQ/RFP	Set DBE goal based on information prior to RFQ/RFP	No difference
5. Reviewing DBE proposal submissions when determining award	Proposers indicate whether can meet goal or show good faith efforts	Proposers indicate whether can meet goal or show good faith efforts	No difference
Commitments or DBE plan	Proposers provide DBE commitments with proposal or immediately after	Proposers provide DBE plan	No DBE commitments with proposal
Pass-fail or scoring	Typically pass-fail	Pass-fail or scoring	Can score or conduct pass-fail review of plan
6. Monitoring compliance	Track DBE commitments (subcontracts, payments) Review good faith efforts	Receive DBE commitments Review good faith efforts Refine/monitor DBE plan	DBE commitments in construction phase Can evaluate based on plan execution Review plan execution
7. Remediating any noncompliance	Apply remedies for any noncompliance	Apply remedies for any noncompliance	No difference

to encourage development and opportunities, including unbundling, for DBEs and small businesses as part of their proposal preparation. CDOT advised that these efforts could be compensated through the stipends paid to proposers (CDOT 2012).

Interviewees from state transportation departments indicated that engineering staff and others involved in design-build procurements may not fully understand the Federal DBE Program and its requirements. They said that important steps can be missed as a result of this lack of awareness. Some DBE program staff indicated that they should be involved from the beginning of these projects but were not. One person said it feels as though the DBE program is an afterthought.

In the same way, state DOT and industry interviewees reported that DBE program staff may not understand alternative delivery contracting methods.

Some state transportation departments have developed committees that included DBE program staff, engineering staff, and professionals from other divisions to establish and communicate DBE program requirements to all parts of the organization involved in project contracting and delivery. Some state transportation departments have involved prime contractor and DBE representatives in these discussions. It appears that these efforts can succeed in incorporating the DBE program in each stage of the contracting and project delivery process.

Minnesota DOT has developed protocols for internal communication guidelines and responsibilities in its design-build manual. The guidelines require that the design-build program manager contact the Office of Civil Rights when—

- Any early design-build team communications are to take place;
- A pre-RFQ meeting has been planned for a project;
- An RFQ is advertised for a project; or
- An RFP is advertised.

Agencies have expressed concern that, with so many players involved—including FHWA, U.S.DOT, state DOTs, and local agencies—there are many opportunities for failure. Caltrans recently had difficulty with local agencies operating the goals program primarily through good faith efforts that were not adequately supported. The Caltrans representative raised the issue of who has the authority to intervene in local authority goal-setting. She said that Caltrans can influence this but can't require local agencies to change a goal. In the future, Caltrans will require its concurrence on any local agency approval of good faith efforts on projects that are \$2 million or more.

3. Communicating Opportunities to DBEs and Other Small Businesses

According to state DOTs, those that use new methods for DBE contract goals on alternative delivery method projects must typically expand the scope and length of their outreach efforts to DBEs and other small businesses.

Continued Outreach

Traditional outreach efforts end once a project is awarded. Some state DOTs have adopted outreach efforts that continue throughout the duration of the design-build contract. The following are some of these state DOTs.

Missouri DOT. FHWA has identified the Missouri DOT community engagement approach as a model for DBE outreach. The approach is designed to reach out to new groups of participants. The community engagement attempts to bring all stakeholders together, including the state DOT, FHWA, contractors/bidders, prime contractors, subcontractors, community-based organizations, apprentices, and pre-apprentices. Advisory committees meet monthly throughout the duration of a project to watch over the prime contractor and ensure that goals are being met.

Georgia DOT. For future P3 contracts, the Georgia DOT (GDOT) begins communicating with DBEs and prime contractors about the work well in advance of proposal deadlines. GDOT identifies DBEs involved in work areas that might be a part of the project to let them know about the project and the teams that might be competing for the work. GDOT does the same for potential proposers.

Minnesota DOT. The following textbox presents a broad range of strategies for inclusion of DBEs and other small businesses in the Minnesota DOT's (MnDOT's) alternative delivery method projects. The department notifies DBEs and other small businesses of contract opportunities early in the design-build procurement process. MnDOT has a standardized process for notifying the Office of Civil Rights of key events (MnDOT 2013b).

Retaining Consultants to Assist with Outreach Efforts

At least six state DOTs interviewed retain consultants to perform intensive DBE and small business outreach efforts, from identification of the project well into construction. Sometimes the design-build team is required to hire this consultant (Caltrans has this requirement for some of its design-build contracts).

The design-builder on a recent Maryland DOT project retained a consultant to assist with DBE compliance, outreach efforts, and supportive services for DBEs, which included training on business development, joint venturing, bidding, and estimating, and referrals to bonding and insurance institutions.

4. Establishing a DBE Goal for the Project

Most state DOTs set DBE goals using traditional methods. However, some states have established new goal-setting methodologies.

Setting Separate Goals for Design and Construction

Among the state DOTs using new methods, nine set separate DBE contract goals for design and construction, and 17 set a single goal combining design and construction. Two set a single goal but do not include design in it. Some states set separate goals for the design and construction portions of a design-build contract. Table 4 summarizes results for these state DOTs and the five states that use traditional methods.

The traditional method for setting a DBE contract goal is one goal for the entire project. Sometimes the state DOT (e.g., NCDOT) sets a goal for the construction portion only. The following are examples of the traditional method:

- Until mid-2013, Arizona DOT set a single DBE contract goal on a design-build project. Now it sets a separate DBE goal on the preconstruction portion of the contract.
- Caltrans sets separate DBE contract goals for P3 projects.
- Colorado DOT decided to set two goals in the future in response to the fear among DBEs that professional design DBEs do not get any work on design-build projects. The goals for the two components are based on work types. For example, the design-builder submits commitments for engineering-related DBEs even if they are to be used later in the project.
- Maryland DOT establishes a goal for the overall project with a separate goal for the professional services/engineering portion. For example, the approved overall DBE participation goal for a project is established at 15% of the total price, with a subgoal of 20% for professional services. Professional services include design, supplemental geotechnical investigations, surveying and other preliminary engineering, quality control as defined in the contract, environmental compliance activities, utility coordination, permitting, and public information (Maryland DOT). This method of handling dual goals is rare among state DOTs.
- After gaining experience on its first few projects, Missouri DOT decided to establish separate goals for the design services and construction services on its third, fourth, and fifth design-build projects. Design-builders met the DBE goals during construction, and the agency wanted to increase DBE participation in the design phase.
- NYSDOT has the option of setting separate contract goals on the design and construction phases. The department may also set separate goals for various elements of the work under the contract.
- Until recently, TxDOT set separate goals for design and construction. In 2014, the agency went back to setting a single goal.
- NCDOT develops goals for the construction portion of design-build projects. NCDOT has a race-neutral program for design and excludes the design portion of the contract for any goal-setting. For a \$200 million project, of which design is \$10 million, NCDOT will

Minnesota DOT Small Business Program Inclusion Strategies

- (1) Early Engagement—Identification early on of projects that have opportunities for small business or projects that have alternative delivery methods.
- (2) Focus on Design/Build and Large-scale Projects—These projects are more likely to yield opportunities for small businesses and account for the majority of the department's overall DBE goal. Early identification, communication, and coordination with OCR can make a big difference in the goal and goal attainment.
- (3) Meet 'n' Greets—These are important and provide opportunities for prime and small business owners to meet and network. Opportunity for the department to communicate program rules, regulations, objectives and expectations.
- (4) Mandatory Subcontracting—This has worked well. On projects where this option has been utilized, there has been small business participation in scopes of work that traditionally have not benefitted DBEs and other small businesses.
- (5) De-bundling—Even though it does not guarantee disadvantaged business enterprise/targeted group business/veteran participation, it does provide an opportunity for those businesses to compete against other small businesses. We need assistance from the district in identifying scopes that minimize the risk to the department.
- (6) Goal Setting—Communication with and assistance from project engineers and estimators when OCR staff have questions regarding work items, quantities and the tools we utilize when we set small business program goals.
- (7) Meeting the Goal vs. Good Faith Efforts—Consistent and unified message. The focus should be placed on the effort directed toward meeting the goal. It will be evident even if unsuccessful. Not meeting the goal opens up opportunities for delay and the risk of the project not being awarded on time or starting on time. When that happens, nobody wins.
- (8) Post-Award Activities—Communication and cooperation ensure that the small business program participation levels committed to at the time of contract clearance are achieved throughout the project and at the conclusion of the project. It also helps the department meet state and federal reporting requirements. There is not an expectation for District personnel to be civil rights specialists, but those that interact on the project on a daily basis should contact OCR if they have questions or identify possible red flags. We will take it from there.
- (9) Prompt Payment—Assistance with holding prime contractors accountable for possible violations of the State Prompt Payment Statute.
- (10) Project Managers—Key players in the department's effort and the initiative at the federal level to expand and increase small business participation in areas other than construction. Keeping DBE/TGB/veteran firms in mind when there are opportunities for direct-select contracting.
- (11) Communication—Always the key to achieving program goals and objectives.

Source: MnDOT 2013b.

set a goal (10% for example) on the \$190 million that is construction. Unlike design-build, NCDOT includes the design portion in the goal for P3 projects.

Setting DBE Contract Goals for the Operations Phase of a P3 Contract

Some P3 projects include an operational phase.

- Caltrans is now doing its first P3 project, Presidio Parkway in San Francisco. DBE goals were set for different phases of the contract.
- Colorado DOT is going forward with a P3 project and will use DBE contract goals in the same way they are used for design-build, with the exception of the 30-year

maintenance phase of the P3. For that phase, CDOT will treat the concessionaire as a local agency receiving FHWA money through the department. If the concessionaire lets a project for maintenance work, it will submit a scope of work to CDOT, which will then set the DBE contract goal, just as for a design-bid-build project. CDOT will oversee and monitor performance.

- Illinois and Virginia DOTs set a DBE goal for the operations phase of P3 projects.
- The Massachusetts Bay Transportation Authority (MBTA), a part of the Massachusetts DOT, set a 15% DBE goal for a 2013 P3 procurement for the operation and maintenance of its commuter rail system. MBTA set that goal by reviewing the potential subcontracted work items involved in operations and maintenance.

TABLE 4
USE OF NEW OR TRADITIONAL METHODS FOR DESIGN-BUILD OR P3 PROJECTS (AMONG ALL STATE DOTs USING DBE CONTRACT GOALS)

States That Have Applied DBE Contract Goals to D-B or P3 Projects	Goal for Construction Only	Single Goal for Design and Construction	Separate Goals for Design and Construction
Arizona		•	
California			•
Colorado			•
Connecticut		•	
Delaware			•
Georgia		•	
Hawaii		•	
Illinois			•
Indiana		•	
Kansas		•	
Kentucky		•	
Louisiana		•	
Maryland			•
Massachusetts			•
Michigan		•	
Minnesota			•
Mississippi		•	
Missouri			•
Nevada		•	
New Mexico		•	
New York		•	
North Carolina	•		
Ohio		•	
Oregon		•	
Pennsylvania		•	
Rhode Island			•
South Carolina	•		
Tennessee	•		
Texas			•
Utah		•	
Virginia		•	
Washington		•	
West Virginia		•	
Total	3	20	10

NCDOT is involved in its first competitive P3 project. It will require reporting of DBEs on the operations phase of a P3 contract, but the department has not set a DBE goal or required any show of good faith efforts.

Florida DOT reports that it is still considering how aspirational DBE goals will apply to the operations and maintenance phase of a P3 contract, but it might seek to obtain 9% DBE participation each year.

“No Goals” Approach

Hawaii DOT does not set DBE goals in the proposal process. At time of proposal, proposers identify the percentage of DBE participation they plan. They list the DBEs they expect to use and the planned subcontract values for those firms. The list of DBEs and values are included in the proposals. The proposed amount becomes the DBE goal for the winning proposer. There is no requirement to include additional details about how the design-builder plans to meet the DBE percentage. Proposed DBE participation is usually less than 3%.

FHWA Guidance

FHWA’s 2002 Final Rule for Design-Build Contracting considered state DOT and other input regarding DBE goal-setting. FHWA’s Discussion of Comments in the Final Rule indicated that state transportation departments might consider separate DBE goals for the various elements of a design-build project. At the state DOT’s discretion, “In some cases it may be appropriate to utilize separate DBE goals for design and construction services (or other services such as right-of-way acquisition, construction inspection, etc.)” (FHWA 2002).

5. Reviewing DBE Proposal Submissions to Determine Contract Award

Because of the difficulties associated with committing subcontractors before the design has been completed, FHWA permits the use of an alternative DBE compliance approach for design-build projects (FHWA 2002).

Some state DOTs conduct pass-fail evaluations of submitted DBE plans, and others score the plans. There are differences in when state transportation departments require lists of potential DBEs and individual commitments. State DOTs that use these types of approaches reported that proposers almost always indicated that they would meet the DBE contract goal set for a design-build or P3 project. The DOTs reported that design-builders almost always met those goals.

Sample DBE plans are provided in Appendices C and D. Appendix C is an example of a plan submittal from a design-builder on a 2013 Texas DOT project. Appendix D contains three design-builder DBE and workforce/EEO project plan submittals for the Louisville-Southern Indiana Ohio River Bridges Project, a collaboration between the Kentucky Transportation Cabinet and Indiana DOT.

Pass-Fail Evaluation of DBE Plans

Many state DOTs evaluate the plans on a pass-fail basis. Any proposer that fails the evaluation of the DBE plan is not considered further in the proposal process. State transportation departments using pass-fail evaluation include the following:

Caltrans. Meeting DBE plan requirements at the time of proposal submission is pass-fail. According to a Caltrans interviewee, Caltrans looked into assigning points for exceeding the goal, but apparently FHWA said that was prohibited.

Missouri DOT. The Missouri DOT (MoDOT) conducts a pass-fail evaluation of each proposer's DBE and workforce plan, which outlines how a proposer intends to achieve the goal. On MoDOT's first two design-build projects, the proposers were required to sign an agreement to meet the goal or make good faith efforts to do so. On the more recent design-build projects, proposals must include a commitment to meeting the goal and provide as much DBE participation information as possible.

New York State DOT. The standard design-build procurement documents require proposals to include a satisfactory plan for reaching the applicable project goal and a demonstration of good faith efforts through submission of the proposal, as well as providing appropriate evidence of good faith efforts undertaken before submittal of the proposal (Norville and Streett n.d.).

NYSDOT's minimum requirements for DBE plans require that they—

- Identify specific economically feasible work units to be performed by DBEs over the course of the project;
- Describe the outreach efforts to meet the project's DBE goals;
- Include a system of reporting that will document attainment of the DBE participation schedule, achievement of the project's DBE goal, and compliance with applicable government rules; and
- Include an affirmation regarding the proposer's intention to make good faith efforts to achieve the project's DBE participation goal.

Utah DOT. UDOT requires proposers to indicate only that they (1) will meet the DBE contract goal or (2) have made good faith efforts to do so. UDOT reports that, to date, no proposers have used the good faith efforts option at time of proposal. UDOT does not require proposers to submit a DBE plan, saying that requiring a plan would add no value. UDOT interviewees reported that contractors are very aware of the DBE requirement and know they should never be the cause of UDOT losing federal funding on a contract.

UDOT had a scoring system for DBE plans about six years ago but changed it to pass-fail because, in practice, the scores were always the same for each proposer.

Washington State DOT. Each proposer is required to submit a DBE plan that the Washington State DOT (WSDOT) evaluates on a pass-fail basis. The Office of Equal Opportunity (OEO) is responsible for this review. Proposers are not

required to identify each DBE they will use at the time of proposal submissions. Only the plan is evaluated.

WSDOT reported that important early steps with design-build projects are communicating with the DBE community before the project, readying them for the amount of work to be done, and having the prime engaged with the DBE program. The new process for reviewing plans brings design-build into the same system used to review minority, women, or small business enterprise participation plans. In the future, WSDOT will confer with the winning contractor to review the plan and determine whether it can be enhanced if necessary.

Virginia DOT. Like UDOT, VDOT conducts a pass-fail evaluation of proposer compliance at time of proposal without requiring a DBE plan (discussed in more detail later in this chapter).

Point Scoring of DBE Plans

Some state DOTs evaluate DBE plans and assign point scores, which are added to the scores for other elements of a proposal. Federal regulations allow scoring as long as the evaluation does not include DBE achievement beyond the stated DBE goal for a contract (explained later in this part of chapter four.)

Colorado DOT. Proposals must include a plan for how a proposer will meet the goal or demonstrate good faith efforts if it cannot achieve the goal. No specific commitments to firms are required. On a recent \$100 million design-build contract, plans were scored by a committee that included civil rights staff and representatives of some other departments (e.g., environment, communications). At this point, CDOT does not assign evaluation criteria for what makes the best plan; each evaluator can see it differently. The highest-scoring DBE plan had specific strategies for DBE participation by work area, including backup plans for meeting the DBE goals.

Florida DOT. Although this provision is not currently in application, FDOT's DBE program plan anticipates that it would use the following procedures if it used DBE contract goals on such projects:

The Department would utilize preference points for subcontracting to DBEs on design-build solicitations and other similar solicitations that are awarded based on a point system as opposed to the low bid process. This would allow 5% of the total points to be awarded if the proposer submits 8.60% (or the current overall DBE goal) DBE utilization in their proposal. Additional bonus points may also be awarded if the proposer exceeds the 8.60% DBE goal. (FDOT 2013)

This portion of FDOT's plan (again, not currently in application) may run afoul of 23 CFR Section 635.107 because of

the potential consideration of “bonus points,” but it could be easily remedied by removing the reference to bonus points.

Indiana DOT. INDOT sets a DBE contract goal for P3 projects, then scores the plans proposers submit for meeting the goal. Some proposers will perform outreach and hold events before developing a proposal, and can then refer to that effort in their proposals. At time of proposal, INDOT asks proposers to submit an “anticipated list” of DBEs (which does not reflect commitments).

Kentucky Transportation Cabinet. On the Louisville-Southern Indiana Ohio River Bridges Project, the Kentucky Transportation Cabinet (KYTC) assigned points to the DBE portion of the proposal in place of a pass-fail evaluation. According to KYTC, this method helped emphasize the importance of the DBE goals on the project and improved the best-value selection process. Five points out of 100 were reserved for DBE and workforce plans. Proposers were evaluated on their demonstrated ability to meet or exceed DBE expenditure. The process included an evaluation team, a nonvoting advisory member, and a nonvoting FHWA participant. The three proposers’ scores for DBE were 4.8, 4.8, and 5.0. Because of the close total scores (99.2 versus 98.8 between the winning proposer and the runner-up), DBE points could theoretically have made the difference in the contractor selection if the scoring of the DBE plan had more than a 0.2-point spread.

The following are examples of favorable comments in the review of DBE plans from the three proposers:

- Integrated team approach;
- Experience exceeding DBE goals on other projects;
- Strong communications plan for DBEs;
- Having already held multiple outreach events;
- Providing a DBE list;
- Dividing work into small packages;
- Commitment to addressing any disputes within 10 days;
- Assigning a subcontract manager to each firm;
- Internal team training;
- Offering same training to DBEs that they give to joint venture staff; and
- Prompt payment policies.

It is important to note that one comment was “stated goal in excess of 8%” (the DBE contract goal). Negative comments included these:

- Didn’t identify anticipated percentage DBE participation;
- Lacked detail in certain aspects of the plan; and
- Weak payment explanation.

Ohio DOT. Proposals for Ohio DOT megaprojects require the proposer to provide a DBE plan, which is scored as a

part of the evaluation process. More comprehensive plans receive higher scores. The proposer is directed to submit a plan that clearly articulates the methods it intends to employ to meet the goal or make good faith efforts to meet the goal. Examples of innovative and aggressive good faith strategies include the use of a diversity and inclusion consultant. Proposals also describe efforts to reach out to DBEs and potential DBEs eligible for certification that may be affected by or benefit from the project.

Ohio DOT’s boilerplate for the DBE program for design-build selection criteria includes the following standard language (Ohio DOT 2011):

Describe the DBT’s plan to employ an independent Diversity and Inclusion Consultant.

The DBE goal for this project is set at ??????. The DBT should submit a plan that clearly articulates the methods it intends to employ to meet the goal or make good faith efforts to meet the goal. Include innovative and aggressive strategies including the use of the Diversity and Inclusion Consultant. Describe the DBT’s efforts to reach out to DBEs and potential DBEs eligible for certification that may be impacted by, or benefit from, the project.

The Department will use the following criteria to distribute Outreach To The Disadvantaged Enterprise Community And On-The-Job-Training Goal points.

Plan to Achieve DBE Goal of ?????? 25% of points

Plan Outreach to the Disadvantaged Community 25% of points

Plan to Achieve???? Trainees 25% of points

Plan for Training, Retention and Tenure of Trainees 25% of points

FHWA Regulations on Proposal Scoring for DBE Participation. Title 23 of the CFR, Section 635.107 prohibits proposal scoring systems for design-build that give more points for a DBE commitment higher than the DBE goal set for the contract. Other forms of scoring related to DBE participation or a DBE plan appear to be acceptable.

This issue was discussed in comments on the 2002 Proposed Rule. FHWA received comments from the Associated General Contractors of America suggesting that “DBE commitments ‘above or below’ the contractual requirements must not be used as a proposal evaluation factor in determining the successful Offeror” (FHWA 2002). FHWA’s response in the Final Rule Comments was that “the degree of DBE use in excess of the goal should not be used as an evaluation factor that would provide an additional credit or preference in the selection process” (FHWA 2002).

FHWA Regulations on One-Stage or Two-Stage Evaluation of DBE Issues. Title 23 of the CFR, Part 636 provides for proper evaluation of design-build proposals. Guidance on

the use of factors in a two-stage evaluation process (i.e., both an RFQ and an RFP stage) affects how state DOTs might evaluate DBE plans or commitments. Section 636.303 notes that criteria used in the first stage are not to be used again in the second stage.

It might be possible to include different factors regarding DBE issues in the two stages. For example, a contractor's past success implementing the Federal DBE Program might be included as an evaluation factor in the prequalification stage, and its proposed DBE plan for the specific design-build project might be a factor in the proposal stage (for short-listed firms).

This regulation caused the North Carolina Department of Transportation to change its DBE evaluation process. NCDOT once evaluated a proposer's DBE plan at both the RFQ and the RFP stages. It now evaluates DBE plans only at the RFQ stage. Scoring of the DBE plan helps determine whether a proposer is short-listed.

Contractor Feedback. When asked about a pass-fail or scoring approach to evaluating the DBE plan submitted with a proposal, one contractors' trade association noted some advantages and disadvantages of each:

- Either method is subjective and therefore somewhat perilous for the proposer, especially if evaluators do not have a full understanding of what they are evaluating;
- Pass-fail has the most risk to the proposer (proposer is out if it fails the DBE plan requirement);
- All-or-nothing point systems (e.g., 5 points if pass and 0 points if fail) are somewhat less draconian but still may be risky and may inadequately reflect nuances of what is being evaluated; and
- Graduated point systems (e.g., 0 to 5) might be best, as they are more forgiving of evaluators who are less knowledgeable about a topic.

Timing of DBE Commitments

With the new approaches to DBE contract goals on design-build contracts, many state DOTs allow proposers to submit a general commitment to meet a contract goal at the time of proposal submission, followed by specific commitments to DBEs before those firms are used. State DOTs in Arizona, California, Colorado (for the construction phase), New Mexico, South Carolina, Utah, and Virginia are examples of agencies using this approach. Processes in some of these states are described below.

Colorado DOT. CDOT requires commitments for DBE construction firms before those firms are used. Commitments for DBE engineering-related firms are required before the first notice to proceed. CDOT reported that primes much prefer this system.

New Mexico DOT. On its current design-build project, the New Mexico DOT (NMDOT) gave the design-builder substantial flexibility in the timing of individual DBE commitments, as long as those commitments were received before the use of the DBE.

NMDOT indicated that this flexible approach to DBE commitments has been successful. The design-builder regularly enters DBE contract and payment information into NMDOT's reporting system, so the agency receives timely information on DBE achievement.

South Carolina DOT. SCDOT requires commitments within 180 days after project award. According to SCDOT, primes, DBEs, and the agency have all found this method to be acceptable.

Virginia DOT. Proposers on VDOT design-build projects are not required to submit a DBE plan with their proposals. At the time of proposal submission, proposers are required to meet the contract goal or show good faith efforts. They are required to state in the letter of submittal that they are committed to achieving the DBE goal for the project.

Federal Regulations. In explaining the 2002 Final Rule for Design-Build Contracting, FHWA discussed the advantages and disadvantages of different timing for requiring specific DBE commitments from design-build contractors (FHWA 2002). There was some concern that allowing contractors to furnish DBE commitments after contract award would create issues with enforcement and weaken the use of DBE contract goals. Options discussed included requiring proposers to sign and notarize letters of subcontract intent (co-signed by the DBE) confirming that the contractor had actually discussed the project with the DBE, including specific products/services at specific amounts.

However, FHWA concluded that it is not always feasible to require DBE commitments before the award and left flexibility for state DOTs to craft policies appropriate for their states.

The level of design provided in the RFP document is often not sufficient to allow the design-builder to enter into subcontracts. In many cases, the design-builder may not have advanced the design to a sufficient level during the proposal process to serve as a basis for negotiating subcontracts. In many cases, it will be impractical to require design-build proposers to provide DBE subcontract commitments before the award of the contract. (FHWA 2002)

6. Monitoring Compliance

Under new approaches for DBE contract goals, the monitoring phase expands from ensuring that listed DBEs are used and paid to assessing a broad range of contractor efforts to meet the DBE contract goal.

Continued Good Faith Efforts

State DOTs that implement new approaches to DBE contract goals on design-build contracts must ensure that, when performing the contract, the design-builder has met the DBE contract goal or made good faith efforts to do so. Typically, a DBE plan is required with the proposal and becomes part of the contract. Depending on the comprehensiveness and quality of the plan, monitoring good faith efforts may be as straightforward as tracking whether the design-builder follows through on its DBE plan for the project.

If a state DOT determines that a design-builder has not met the goal or good faith efforts requirements, that contractor can request administrative reconsideration [49 CFR 26.53 (d)]. Federal regulations require that the state DOT's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeree failed to meet the goal or make adequate good faith efforts to do so.

Minnesota DOT. MnDOT requires that, during the term of the contract, the design-builder continues to make good faith efforts to ensure that DBEs have maximum opportunity to successfully perform on the contract, and that the design-builder meets its DBE goal. MnDOT's examples of continued good faith efforts include these:

- Negotiating in good faith to obtain DBE participation both before and during the life of the project;
- Continuing to provide assistance to DBEs in obtaining bonding, insurance, and so on, if required by the contract;
- Notifying a DBE in writing of any potential problem and attempting to resolve the problem before formally requesting approval from the MnDOT Office of Business Development to obtain a substitute DBE or a DBE participation modification;
- Ensuring that all vendors, including DBEs, are paid promptly for work satisfactorily completed within the previous 30 calendar days;
- Timely quarterly submission of payment statements; and
- Quarterly submission of a good faith effort plan to show ongoing efforts made to achieve the DBE participation goal (MnDOT 2010).

Federal Regulations. Title 49 of the CFR, Section 26.53 describes the good faith efforts procedures and requirements state DOTs must follow when using DBE contract goals; 49 CFR Part 26, Appendix A defines and describes what is meant by "making good faith efforts to meet the goal."

The following textbox reproduces this description. As Appendix A points out, the list is not meant to be exhaustive. The list is also not meant as simply a "yes-no" checklist, "It is important for you to consider the quality, quantity and

intensity of the different kinds of efforts that the bidder has made." Appendix A summarizes the guidance in this way: "The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements" (49 CFR Part 26, Appendix A).

Federal regulations in 49 CFR Section 26.53 (d) outline the provisions for administrative reconsideration that agencies must provide to a bidder or proposer if the agency determines that the contract has failed to meet the good faith effort requirements.

Some state DOTs have expanded upon these examples of good faith efforts in their DBE program plans. Oregon DOT has developed best practices for prime contractors to encourage DBE participation in CMGC contracts. The textbox above provides this list.

Assessing Good Faith Efforts: WSDOT's Alaskan Way Viaduct Design-Build Contract

Seattle Tunnel Partners (STP), a joint venture of Dragados USA and Tutor Perini Corp., won the \$1.35 billion Alaska Way Viaduct (AWV) design-build contract (signed in January 2011). Washington State DOT set an 8% DBE goal on the contract, and the STP proposal agreed to meet it. The goal amounted to \$91 million of work for DBEs. STP could achieve the 8% minimum contract requirement by awarding work to DBE firms or through documented good faith efforts. As a recipient of federal transportation funds for the project, WSDOT was obligated to provide oversight of STP's performance and to enforce its contractual commitments.

As of March 2013, DBE participation on the project was less than 1%. A number of barriers to participation emerged, as demonstrated by a complaint about STP's actions filed with FHWA by the owner of Washington State Trucking (Complaint: DOT#2012-0257). FHWA received complaints from eight other DBEs and responded with a November 1, 2013, Report of Investigation (Mathis 2013).

Investigation

The investigation found WSDOT in noncompliance with its obligations under the Federal DBE Program requirements. FHWA deemed that WSDOT had not provided adequate oversight of the DBE program by permitting STP "to use merely *pro forma* efforts to meet the Project's 8 percent goal and report inflated DBE commitments." The investigation addressed the following two key issues.

Issue 1. Did WSDOT provide requisite DBE program oversight by ensuring that STP used adequate good faith

- A. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. 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 prime contractor might otherwise prefer to perform these work items with its own forces.
- C. 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.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, 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.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, 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 good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

Source: 49 CFR 26, Appendix A.

efforts when it attempted to replace an excavating company (a DBE firm that lost its certification early in the project) with another DBE?

Conclusion, Issue 1. While STP ultimately hired another DBE to replace the excavating company, the procedures it followed created barriers and hardships for DBEs, which does not conform to good faith efforts requirements. WSDOT failed in its oversight responsibility to ensure that STP used good faith efforts to find other DBEs once the decision was made to replace the initial excavating company.

Issue 2. Did WSDOT meet the requisite oversight and monitoring obligations to ensure DBE program compliance by STP? Specifically, did WSDOT monitor STP's project

DBE goal attainment, including whether STP's procurement practices mitigated barriers for DBEs to allow them equal opportunities to participate on the project as subcontractors?

Conclusion, Issue 2. WSDOT failed to oversee and adequately monitor STP's efforts to achieve the DBE goal. WSDOT failed to intervene when it recognized that STP's efforts to meet the DBE goal were not of the nature of the efforts contemplated and required under the DBE regulations.

Ultimately, FHWA's investigation found the following:

1. *Noncompliance with DBE program obligations.* Although WSDOT was obligated to provide oversight and enforce STP's contractual commitments to

achieve 8% DBE participation, FHWA reported that the state agency maintained a “hands-off” approach. Hence, WSDOT did not meet its obligations to provide meaningful oversight of STP’s efforts to hire DBE firms to meet the 8% DBE contract goal for the AWV design-build project.

2. *Noncompliance through pro forma good faith efforts.* FHWA determined that while STP held many outreach events, these events were merely pro forma, as they rarely resulted in job opportunities for DBEs.
3. *Suppression of DBE participation.* STP’s procurement practices created artificial barriers for DBE participation by setting onerous and unfair requirements in their RFPs that were inconsistent with DBE regulations [49 CFR Section 26.53 (g)]. For example, STP enforced a confusing electronic bid-submission process, unnecessary bonding requirements, and a strict low-bid policy that FHWA determined negatively affected DBE participation. Requiring DBEs to submit personal and financial information resulted in additional hardships, according to FHWA, as did certain specifications on truck ownership and fleet size. Apparently, none of those requirements had been applied to the initial excavating company.
4. *Implied DBE participation but limited follow-through.* STP also had a number of not-to-exceed contracts, which implied substantial DBE participation but did not lead to much work. FHWA found “inflated DBE participation reports based on unsubstantiated commitments” (FHWA 2013).

FHWA’s investigation resulted in written notice directing WSDOT to—

- Take all appropriate actions against STP available under its contractual agreement;
- Work with STP to identify specific actions to achieve the 8% DBE goal by project completion in 2015 (now 2016); and
- Revise its DBE program plan to institute effective monitoring and oversight measures for all contracts, including design-build, to ensure that contractors either meet contract goals or provide documentation of meaningful good faith efforts to do so (Mathis 2013).

Achieving Compliance

WSDOT agreed to comply with the FHWA directives. WSDOT began by engaging an outside consultant to monitor STP’s efforts and designating an AWV program DBE manager for support and oversight.

Initial efforts were followed by a November 22, 2013, letter from Chris Dixon, STP project manager, to Lynn Peterson, Secretary of Transportation, WSDOT (Dixon 2013), and by WSDOT’s November 27, 2013, response to FHWA, which included project and program goals and action plans, as well as a specific DBE action plan for AWV (Peterson 2013). WSDOT outlined four primary actions designed to strengthen WSDOT’s DBE program:

1. *Monitoring and oversight.* Identify specific monitoring and oversight mechanisms to ensure STP compliance with the goals specified in its contract with WSDOT.
2. *Clarification and accountability.* Clarify project- and programmatic-level roles and responsibilities for goal-setting, and establish clear lines of accountability for achieving those goals.
3. *Consistent contract language.* Establish consistent language for all WSDOT projects that have DBE goals, including design-build projects.
4. *DBE community engagement.* Increase engagement with and support of the DBE community.

On January 13, 2014, WSDOT notified STP that it was in breach of contract, as it had created barriers and hardships to DBE participation. To avoid sanctions, STP had to allow monitoring by WSDOT and to meet quarterly participation targets set by WSDOT.

FHWA’s letter and conciliation agreement (March 20, 2014) outline mutually agreed-upon strategies to increase oversight of DBE participation at both project and program levels (Nadeau 2014).

DBE Participation Change Order

WSDOT issued Change Order No. 91, withdrawing the previous finding of a breach of contract but requiring STP to—

- Award \$96 million in work on the AWV project to certified DBE firms; and
- Provide specific additional resources to its subcontracting efforts, including establishing a third-party independent program coordinator to review DBE contracting procedures and verify compliance with federal and state regulations and WSDOT contractual commitments (WSDOT 2014).

Ongoing Efforts

Through February 2014, STP had reported \$75 million in contracts to 82 certified DBE firms. About one-third of that amount (\$26 million) is being counted toward the DBE contract requirement.

Reporting Requirements

Effective monitoring requires accurate reporting of DBE participation.

Caltrans. The design-builder is required to provide DBE progress reports to Caltrans with each invoice and to provide an annual report on the design-build project on or before August 1 of each year. Each report must include a narrative summary stating whether the contractor is on target with respect to the DBE goal set forth in the design-build contract or whether the goal has been exceeded or is behind target. Caltrans also holds quarterly meetings with the contractor.

Colorado DOT. After the contract is awarded, design-builders must produce a work breakdown structure that identifies planned DBE participation by work area. The design-builder produces monthly reports on where it is in terms of DBE participation. If DBE participation is below the projection, the prime must explain why and describe how it will catch up. The project team has regular meetings, including a mandated in-depth review every six months.

Michigan DOT. The design-builder is required to submit a good faith effort plan on a quarterly basis to the DOT's Office of Business Development for review and approval.

Minnesota DOT. Whenever a DBE is selected as a subcontractor, the design-builder or designated DBE liaison officer is required to provide MnDOT with the name of the subcontractor, the total dollar amount of the subcontract, specific work items, estimated quantities of work, and individual unit prices. The DBE commitment is subject to evaluation and approval by MnDOT. Upon approval, the DBE commitment is incorporated into the contract and considered a contract specification.

The design-builder must also submit a DBE work and payment schedule that indicates the DBE firms it expects to use, the amount of payments it expects to make to DBEs, and the percentage of each DBE firm's contract that will be completed each month. The first report must be made 60 days following notice to proceed, and updates are due every 90 days for the duration of the project.

If the design-builder has not met the DBE work and payment schedule, MnDOT will notify it of the need for correction of DBE participation levels to meet the schedule by the next quarter. The schedule is reviewed again after 90 days.

Oregon DOT. The contractor's designated DBE representative meets with the state DOT monthly to review diversity submittals, including prevailing wage rate payrolls/certified statement, DBE issues, and other topics.

Washington DOT. WSDOT performs formal documentation reviews at approximately 25%, 75%, and 100% com-

pletion of construction. Items to be reviewed are randomly selected by the documentation reviewer. These reviews are to ensure that the design-builder is maintaining all the necessary documentation and records. A separate review of all materials documentation is performed at the completion of the project. In addition to the formal reviews, WSDOT onsite personnel perform daily documentation reviews, including involvement of DBE subcontractors on the project.

Monitoring Staff

Some state DOTs appoint internal staff to administer the DBE program for alternative delivery projects. At least six of the state DOTs interviewed also require proposers to identify outside consultants or DBE liaisons to manage the DBE program on behalf of the prime.

Caltrans. Caltrans requires the design-build team to identify a DBE liaison. As a pilot program, the liaison on half of the authorized design-build projects was an employee of the design-builder, while the liaison on the other half was an outside consultant. Caltrans reported that both methods are effective.

Design-builders must update their DBE plans before they start work. The contractor is required to provide DBE progress reports to Caltrans with each invoice and to provide an annual report on or before August 1 of each year of the design-build contract. Each report must include a narrative summary stating whether the design-builder is on target with respect to the DBE goal set forth in the contract.

Kentucky Transportation Cabinet. Each contractor prequalified to perform work on KYTC projects must designate a liaison officer who is responsible for administering and promoting an active program for the use of DBEs.

Kansas DOT. A DBE program consultant from the Civil Rights/Contract Compliance office is taken off all other projects and made responsible for the design-build project. That person is responsible for attending weekly meetings and visiting the site once or twice a week.

7. Remediating Any Noncompliance

State DOTs typically use the same remedies for noncompliance in both alternative delivery method projects and design-bid-build projects.

CHAPTER SUMMARY

Representatives of state transportation departments, contractors, DBEs, and FHWA report substantial difficulties using traditional methods for DBE contract goals on alternative delivery method projects. The principal barrier is the requirement for firm dollar commitments to

individual DBEs at time of proposal, even if the design has been completed.

Twenty-eight of the 33 state DOTs applying DBE contract goals to design-build contracts have adopted a new approach to DBE contract goals for those projects. Twenty-two state DOTs now require a DBE plan at time of proposal. They indicated that applying new methods focusing on a DBE plan at time of proposal (rather than commitments to specific DBEs) is more sensible and more likely to achieve the objectives of the Federal DBE Program. For example, state DOTs can require or strongly urge proposers to include many different strategies in their DBE plans for assisting DBEs and other small businesses. State DOTs report that

higher DBE goals can be set under the new approaches, and design-builders are better able to meet them (and consistently do so).

Some states evaluate plans on a pass-fail basis, while others award points based on the strength of the plans. However, awarding points for exceeding a DBE goal is not allowed under federal regulations.

Based on the interviews conducted, design-builders, DBEs, and state DOTs appear to be better served by these new approaches. The new approaches do require expanded monitoring methods to ensure that DBE plans are effectively carried out by the selected design-builder.

CHAPTER FIVE

APPROACHES TO APPLYING DISADVANTAGED BUSINESS ENTERPRISE GOALS TO CONSTRUCTION MANAGER AT RISK AND CONSTRUCTION MANAGER/GENERAL CONTRACTOR METHODS

State transportation departments also use construction manager at risk and construction manager/general contractor contracts as delivery methods that include construction contractors in the design phase of a project. To do this, the state DOT selects a contractor at about the same time as it selects the design team. Total construction cost is not known at this stage, and CMAR and CMGC contractor selection is based on qualifications, with cost typically not considered.

The textbox in chapter two shows that many state DOTs have legislative authority to use CMAR or CMGC, but only 10 of the state DOTs interviewed had actually used one of these methods, usually recently. Most state DOT interviewees were unfamiliar with the methods; however, CMAR/CMGC use appears to be growing, so it is appropriate to review how state DOTs have been applying DBE contract goals. As with other information reported in this chapter, approaches to DBE contract goals for these types of projects are evolving. This chapter gives a snapshot of methods as of 2014.

FHWA continues to develop regulations concerning CMAR and CMGC. MAP-21, Section 1303 requires FHWA to develop regulations concerning CMGC project delivery. At the time of this report, FHWA said it would issue a Notice of Proposed Rulemaking in 2014 (FHWA 2014a).

The various approaches state transportation departments employ for DBE goals on CMAR/CMGC contracts parallel those for design-build contracts. Interviews with state DOTs elicited the following information:

- Two state DOTs apply DBE contract goals using a traditional design-bid-build method, as outlined in Table 5. At the time of this report, one of those states was considering moving to a new approach.
- Seven state DOTs use a “negotiated DBE goal” method, described later in this chapter.
- For one state DOT, it was unclear what method was used.

STATE DEPARTMENTS OF TRANSPORTATION THAT USE TRADITIONAL APPLICATION OF DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS

Colorado and Connecticut DOTs use a traditional approach to DBE goals for CMAR and CMGC contracts, although Colorado DOT reported that it is considering a change.

Colorado DOT

At the time of the interview with CDOT, it had applied traditional design-bid-build methods for DBE contract goals on CMGC projects. CDOT had set goals on the construction phase to be met at time of proposal. CDOT considered whether the proposer met the goal or showed good faith efforts to do in its pass-fail examination of the DBE component of a proposal.

CDOT indicated that it was reviewing a change in this policy. In the future it might delay setting a goal on the construction portion until bid packages are being developed. CDOT would then negotiate the DBE contract goal with the selected contractor. Once a goal was set, CDOT would monitor whether the contractor met the goal or demonstrated good faith efforts to do so during the course of the construction.

Connecticut DOT

The Connecticut Department of Transportation recently received legislative authority to use CMAR. The state DOT is allowed to complete one of these projects, at which point it

TABLE 5
USE OF NEW OR TRADITIONAL METHODS FOR CMAR/CMGC PROJECTS

States That Have Applied DBE Contract Goals to CMAR/CMGC Projects	Use Same Methods as for Design-Bid-Build Projects	Always or Sometimes Use New Methods
Arizona		•
California		•
Colorado	•	Considering
Connecticut	•	
Michigan		•
Minnesota		•
Nevada		•
Oregon		•
Rhode Island	Unclear	
Utah		•
Total	2	7

will evaluate results. The CMAR project is state-funded, so the Federal DBE Program does not apply; however, the DOT is setting an SBE goal.

The agency is responsible for 50% of the design for the CMAR project. A project-specific SBE program is developed before the RFP.

Summary for State DOTs with Traditional Methods

Table 6 compares traditional approaches to using DBE contract goals for CMAR/CMGC projects with the new approaches for the state DOTs described in the balance of this chapter.

STATE DEPARTMENTS OF TRANSPORTATION THAT USE NEW APPROACHES TO DISADVANTAGED BUSINESS ENTERPRISE CONTRACT GOALS

Several state DOTs no longer set a DBE goal for the construction portion of the contract before they select the construction manager.

Arizona DOT

ADOT had been awarding CMAR projects without DBE goals; it began setting goals on these projects after receiving

a letter from FHWA directing it to do so. A CMAR DBE goal is negotiated with the construction manager when the guaranteed maximum price is negotiated.

ADOT reported that DBE participation is relatively high on CMAR projects (above 6% or 7%) because of substantial subcontracting opportunities on the types of projects for which CMAR is used.

Caltrans

Caltrans has the authority to pilot about six CMGC projects. Caltrans is in the initial stages of two projects:

- State Route 140 Ferguson Slide Permanent Restoration Project; and
- State Route 99 Realignment.

Caltrans did not set a DBE goal at the RFQ stage of the SR 140 project. Contractors were only required to sign an affidavit stating that they would meet the goal that would be set by Caltrans for the construction phase or make good faith efforts to do so.

As Caltrans is funding the State Route 99 Realignment with funds from the California High Speed Rail Authority, a small business participation goal of 30% will be applied.

TABLE 6
KEY DIFFERENCES FOR NEW APPROACHES TO USING DBE CONTRACT GOALS FOR CMAR/CMGC

Stage in the Process	Traditional Approach to CMAR/CMGC	New Approaches to CMAR/CMGC	Change from Traditional Approach
1. Identifying the project as appropriate for DBE contract goals	Need to involve DBE program staff early	Need to involve DBE program staff early	No difference
2. Incorporating DBE program language in RFQ, RFP, and contract documents	Need to incorporate DBE language into all documents prior to RFQ	Need to incorporate DBE language into all documents prior to RFQ	Need to create custom language for innovative approach
3. Communicating opportunities to DBEs and other small businesses	Outreach from project identification through proposal date	Outreach from project identification through construction phase	Extended length of outreach
4. Establishing a DBE goal for the project	Set DBE goal based on information prior to RFQ/RFP	Set DBE goal before award of construction phase	Can wait to set DBE contract goal until at least 60% design point
5. Reviewing DBE proposal submissions when determining award	Proposers indicate whether can meet goal or show good faith efforts	Proposers agree to make good faith effort to meet goal (to be set later)	No goal set at RFP stage
Commitments or DBE plan	Proposers provide DBE commitments with proposal or immediately after	Proposers provide DBE plan (sometimes this step is used)	No DBE commitments with proposal
Pass-fail or scoring	Typically pass-fail	Pass-fail or scoring	Can score or conduct pass-fail review of plan
6. Monitoring compliance	Track DBE commitments (subcontracts, payments) Review good faith efforts	Receive DBE commitments Track DBE commitments Review good faith efforts Refine/monitor DBE plan	DBE commitments in construction phase Can evaluate based on plan execution Review plan execution
7. Remediating any noncompliance	Apply remedies for any noncompliance	Apply remedies for any noncompliance	No difference

Minnesota DOT

MnDOT sets a DBE contract goal on the construction phase of the CMGC contract once the design of the project is nearing completion. The contractor must then meet the goal or show good faith efforts to do so. The following textbox provides sample RFP language regarding the Federal DBE Program for a CMGC contract.

It is the policy of MnDOT that Disadvantaged Business Enterprises, as defined in 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds. Consistent with this policy, MnDOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any U.S. Department of Transportation-assisted contract because of sex, race, religion, or national origin. MnDOT has established a DBE program in accordance with regulations of the U.S. DOT, 49 CFR Part 26. In this regard, the CMGC contractor will take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBEs have the maximum opportunity to compete for and perform the contract.

MnDOT will determine a DBE goal for this project. The DBE goal, which will be identified once the design of the project is nearing completion, will apply to the construction of the project. There will not be a DBE goal for the preconstruction professional/technical services contract.

Source: MnDOT 2013a.

Nevada Department of Transportation

As of spring 2014, the Nevada DOT (NDOT) had experience with four CMAR contracts. As part of their proposals, NDOT asks proposers to submit a DBE participation plan, which is evaluated pass-fail. The DBE plan must describe how proposers will recruit DBEs and assist them with issues such as bonding.

NDOT includes language in each CMAR contract that requires primes to either meet the DBE contract goal or show good faith efforts to do so.

After contract award, NDOT works with the contractor to set the contract goal. The DBE contract goal is set at the 60% design point. According to an FHWA official, setting the goal at the 30% design point had been considered, but the information gained by waiting made the 60% design point preferable.

Nevada's CMAR statute requires subcontractor identification and prequalification at the 60% design point. There is a mandatory meeting of planned subcontractors. These requirements make it essential to conduct substantial DBE

outreach early in the project. One interviewee noted that an advantage of CMAR/CMGC is that the state DOT can offer direct assistance to primes to help them get DBEs.

To monitor the project, NDOT holds ad hoc meetings (initiated by the NDOT project manager) at which the NDOT civil rights office can make recommendations concerning good faith efforts. NDOT requires regular reports on DBE participation and whether the contractor is meeting the goal.

One CMAR project had 12–15 DBEs, more than traditional projects. NDOT reported that these projects can be very large, and bid limits for contractors in Nevada can make it difficult to meet the DBE contract goal (DBEs sometimes have low bid limits). NDOT indicated that the design-builder underestimated the amount of outreach needed to meet the goal and did not have the proper reporting system to show monthly payments.

Oregon Department of Transportation

Oregon DOT has many years of experience applying the DBE program to CMGC contracting methods. The largest project in its history, the I-5 Willamette River Bridge, was completed using CMGC. Oregon DOT does not set a DBE goal on a CMGC contract until it has established a guaranteed maximum price. At that point Oregon DOT reviews the contractor's plan to meet the goal.

Oregon DOT RFPs for CMGC ask the proposer to describe its "commitment to maximizing diversity in subcontracting." This description could include a subcontracting management plan and implementation strategy. Oregon DOT notes that the "plan may include application of best practices described in Section 00144 of the CM/GC General Provisions." Oregon DOT also asks the proposer to describe its plans to ensure that the proposed subcontracting plan is applied at all tiers. Reporting requirements included providing a schedule showing the commencement data and estimated completion date for each DBE subcontractor. Finally, proposers are asked to identify DBE representatives and their roles and responsibilities. Similar questions are asked about EEO issues and workforce diversity under the general category "Diversity Plan Outline." Oregon DOT has scored this evaluation factor on a pass-fail basis.

The following textbox includes some of the most effective practices listed in the current copy identified for the General Provisions.

Rhode Island Department of Transportation

Rhode Island DOT has used CMAR on rail projects and overseen CMAR projects for local airport and seaport authorities. Exact methods for applying DBE contract goals are unclear.

Obtaining a list of certified DBEs.

Designating a qualified DBE liaison.

Developing and maintaining bidder lists of DBEs from all possible sources.

Ensuring that procurement packages are structured to permit DBEs to participate to the maximum extent possible.

Ensuring inclusion of DBEs in solicitation for products or services that they are capable of providing.

Reviewing solicitations to remove statements, clauses, and so on that might restrict or prohibit DBE participation.

Reviewing the bid document's reasons for not selecting bids submitted by DBE and minority, women, and emerging small business firms.

Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.

Attending or arranging for attendance of contractor's project manager at business opportunity workshops, meetings of minority organizations/chambers, trade fairs, and so on.

Monitoring attainment of proposed aspirational targets.

Preparing and submitting periodic required subcontracting reports, including the gathering and assembling of all reports from large business subcontractors (regardless of tier) and submission of those reports to the agency.

Coordinating the conduct of the contractor's activities involving the development and implementation of its DBE and MWESB subcontracting plan.

Designating 40% of work subcontracted to DBEs and MWESBs by dollars to new firms (a firm with which the contractor has not worked within the past three years).

Advertising all subcontracting and potential DBE and MWESB opportunities in local and minority-owned newspapers at least 30 calendar days in advance of the bid/proposal due date.

Soliciting the interest of DBEs and MWESBs for two consecutive weeks to allow those firms to respond to the solicitation.

Providing project information to interested DBEs.

Documenting DBE and MWESB solicitations in writing.

Breaking out contract items into economically feasible units and, where possible, identifying rotation opportunities so that DBE participation is maximized.

Making an effort to allocate these and other subcontracting opportunities to a broad range of qualified DBE and MWESB firms to maximize the number of contracts in the \$10,000–\$50,000 range, the \$50,000–\$100,000 range, the \$100,000–\$250,000 range, the \$250,000–\$500,000 range, and the \$500,000–\$1 million range.

Negotiating in good faith with interested DBEs.

Not rejecting any DBEs as unqualified without a thorough investigation of their capabilities, and working with a technical assistance provider to determine the qualifications of any potentially unqualified DBE.

Making efforts to help interested DBEs obtain insurance or software as required by the contractor, and making efforts to help them obtain necessary equipment, supplies, or related services needed for a competitive bid/proposal.

Following up with all competitive bids/proposals from DBEs to clarify any questions that may arise (and to document any proposals that are not used).

Using the services of available minority/women community organizations, minority/women contractors' groups, minority/women business assistance offices, and other organizations to assist in the recruitment and placement of DBEs.

Source: Oregon DOT 2008.

Utah DOT

UDOT has had many CMGC projects and has applied DBE contract goals to those contracts. UDOT does not set a DBE contract goal before the contract award; it waits until about the 90% design stage, when the construction manager is developing a bid for the contract. The DBE goal is set at that time, and the construction manager must either meet the goal or show good faith efforts (identical to the design-bid-build process). UDOT sets the goal independent of construction manager input (i.e., the goal is not “negotiated” with the contractor).

OTHER STATES

Two other state DOTs discussed here use CMAR/CMGC delivery methods but do not apply DBE contract goals.

Florida DOT

The Florida DOT (FDOT) may use CMAR subject to approval by the State Project Management Office and an annual statewide cap of \$120 million. FDOT applies the DBE program to CMAR as it does to design-build projects: it includes an overall annual DBE goal but no contract-specific goal. FDOT reports that it has a 100% race-neutral program.

Maine DOT

At the time of the interview, Maine DOT was in the design phase of its first CMAR but had not set a DBE goal, as it operates a 100% race-neutral program.

FEEDBACK FROM THE CONTRACTING INDUSTRY

Limited industry feedback for CMAR/CMGC was consistent with that for design-build. In general, industry representatives reported that for contractor selection based solely on qualifications, it is impractical for the contractor to include DBE subcontractors and their contract values as part of the proposal submission. In their view, such a requirement flies in the face of the rationale for CMAR projects. In its purest form, design-build or CMAR projects begin with zero plans. The design and construction team works with the owner to create a project. Alternative delivery methods could encourage creativity in how to approach a project. According to these interviewees, it makes no sense to require subcontract information prior to design. There is a subcontractor selection process, but it comes later than it does in a traditional design-bid-build project.

Industry representatives advised establishing the DBE goal for a CMAR when the design is completed and a

guaranteed maximum price is determined. The DBE goal should be set through collaboration between the contractor and the state DOT. The interviewees said that there can be a more realistic assessment of DBE availability for the project when the contractor is involved in the process. As the design comes together, contractors will know where they can use a DBE.

Industry representatives also suggested that requiring DBE commitments at time of proposal may put the DBEs at a disadvantage, as they will be making a work and price commitment perhaps years in advance of the actual work.

Interviewees noted that DBE program staff at a typical state DOT might not fully understand CMAR/CMGC and therefore would not appreciate the difficulties of setting a DBE goal or requiring DBE commitments too soon in the process.

FEEDBACK FROM FHWA STAFF

An FHWA official who has substantial experience with CMAR/CMGC urged state DOTs to wait to set the DBE contract goal on construction until much of the design is complete. However, he also advised that state DOTs include DBE requirements in the RFP and contract when they initially select the construction manager for the project. He pointed out that most construction managers selected for the preconstruction phase go on to win the construction contract. State DOTs should include what they want for the DBE program upfront—that opportunity cannot be regained after contractor selection, according to this interviewee.

CHAPTER SUMMARY

Based on interviews with states, 10 state DOTs apply DBE contract goals for CMAR/CMGC contracts. Seven state DOTs no longer set a DBE goal before the contract and instead wait to set a DBE goal to just before the construction phase. These DOTs then monitor the contractor’s efforts to meet the DBE goal in the construction phase. Some state DOTs require proposers to include a DBE plan in their proposals.

Some interviewees reported that a state DOT may be able to improve a contractor’s plan for DBE participation if a DBE plan is required and evaluated when the construction manager is selected. They advised state transportation departments to include this factor at the RFQ or RFP stage of the contracting process. Most construction managers at the beginning of a CMAR/CMGC contract eventually become the general contractor for the construction phase, so the plans they set forth in the proposal submission would then be part of the contract language guiding later efforts for DBE participation.

CHAPTER SIX

CONCLUSIONS

The federal government requires state and local governments to implement the Federal Disadvantaged Business Enterprise Program if they receive certain U.S.DOT funds for transportation projects. Use of traditional methods for DBE contracting goals on design-build projects is challenging for state transportation departments and design-build teams. Many state departments of transportation have responded by creating new methods for applying DBE contract goals to design-build and other alternative delivery method projects. This study reviews and synthesizes both traditional and new methods, as well as other aspects of the Federal DBE Program as it pertains to U.S.DOT-funded alternative delivery method projects.

SUMMARY OF RESULTS

The study examined current practices and challenges that state DOTs face in implementing the Federal DBE Program for alternative project delivery methods. Information concerning the use of alternative delivery method projects was obtained for every state, and interviews were completed with staff of nearly every state DOT.

Application of Traditional DBE Contract Goals to Alternative Delivery Method Projects

Of the 48 state transportation departments that appear to have used alternative delivery methods, 33 have applied DBE contract goals to those types of projects. Many of the state DOTs that apply DBE contract goals to alternative delivery projects began by closely adhering to their long-established methods for design-bid-build projects. At the time of this report, five state DOTs continued to use that approach.

New Approaches for Applying DBE Contract Goals to Design-Build Contracts

Representatives of state transportation departments, contractors, DBEs, and FHWA report substantial difficulties using traditional methods for DBE contract goals on alternative delivery method projects. The principal barrier is the requirement for firm dollar commitments to individual DBEs at time of proposal, even though the design has not been completed.

Twenty-eight of the 33 state DOTs applying DBE contract goals to design-build contracts have adopted a new

approach to DBE contract goals for those projects. They indicated that new methods focusing on a DBE plan at time of proposal (rather than commitments to specific DBEs) are workable and can achieve more of the objectives of the Federal DBE Program.

Approaches for Applying DBE Goals for CMAR and CMGC Contracting Methods

Ten state DOTs that use construction manager at risk or construction manager/general contractor methods and apply DBE contract goals were identified. Based on interviews, most state DOTs no longer set DBE contract goals before awarding these contracts; instead, they develop a DBE goal before the construction phase. Some interviewees reported that a state DOT may be able improve a contractor's plan for DBE participation if a DBE plan is required and evaluated as part of the selection of the construction manager.

BARRIERS TO WIDESPREAD IMPLEMENTATION OF NEW METHODS

Many state DOTs have seen the need to adopt new methods to applying DBE contract goals to alternative delivery method projects. Based on interviews with state DOT and FHWA staff, they are doing so with very limited knowledge, experience with the methods, or guidance from U.S.DOT. Study results indicate that most long-standing state DOT practices, as well as available U.S.DOT guidance and training, do not relate to alternative delivery method contracts. Regulations governing the Federal DBE Program in 49 CFR Part 26 primarily relate to design-bid-build projects and traditional consultant contracts. Lack of knowledge and guidance are the principal barriers to further refinement and implementation of the new methods.

SUGGESTIONS FOR FURTHER RESEARCH

Interviews with state DOTs identified many gaps in the information needed to properly and effectively apply the DBE contract goals program to alternative delivery method projects. The gap is most extensive for public-private partnership contracts. A review of federal guidance and past research on the topic confirmed these gaps.

State DOTs indicated in interviews that they would value additional information about successes and failures, as well as clarification from U.S.DOT or FHWA. Future research might include the following:

- How to ensure coordination among state DOT design, contracts, and project management staff, and DBE program staff from the beginning to the end of a project
- Needed DBE program language for requests for qualifications, requests for proposals, other contract documents, and monitoring documents, to ensure clarity for proposers and state DOTs
- Options for how and when to establish a DBE goal on design-build and CMAR/CMGC projects
- How, when, and on what project aspects a DBE goal can be set in public-private partnership contracts
- How best to conduct outreach and consultation with DBE groups on an alternative delivery method project, before and after contract award
- How and when to evaluate whether the contractor has met the DBE goal or made good faith efforts to do so
- Whether DBE plans are valuable and might be required from a proposer
- What could go into a proposer's DBE program plan submitted as part of its proposal, and how that plan is to be evaluated
- Whether and how the state DOT could work with the selected proposer to augment or refine its proposed DBE plan
- Proper timing to request the design-builder to provide dollar commitments for specific DBEs
- How the state DOT counts DBE participation, tracks overall DBE use, and monitors the design-builder's execution of its DBE plan throughout the duration of an alternative delivery method contract
- How the state DOT counts DBE participation, tracks cumulative DBE use, verifies that information, and monitors the contractor's DBE plan through many phases of a long-term P3 contract
- Approaches the state DOT might consider to remedy lagging DBE participation that is identified early in the contract
- What administrative remedies may be properly imposed on the design-builder for failing to meet the DBE goal or showing good faith efforts to do so (or other noncompliance with the Federal DBE Program)
- How the state DOT incorporates opportunities for requests for reconsideration if it determines that the design-builder is not in compliance (either at time of proposal or after award)
- Guidance on when a state DOT must request a waiver from FHWA concerning its use of new methods
- Steps state DOTs must take to ensure that the new methods for applying DBE contract goals are consistent with all aspects of federal regulations, including prohibition of quotas (49 CFR Section 26.43); provisions for consideration of good faith efforts (49 CFR Section 26.53); prohibition of proposal scoring systems that give more points for a DBE commitment higher than the goal set for the project (23 CFR Section 635.107); and prohibition of duplicate use of criteria in multiple stages of an evaluation (23 CFR Section 636.303)
- Any opportunities to extend these new methods for applying DBE contract goals to traditional design-bid-build contracts.

Guidance that emerges from such research will be an invaluable resource for DBE program staff, legal staff, contracting staff, project management staff, contractors, DBEs, and U.S.DOT on how the Federal DBE Program relates to each aspect of alternative delivery method projects. The guidance can be used to create the appropriate tools and training to apply and enforce the program, including new standards for DBE program language for RFPs, proposal evaluation procedures, contract specifications, and program monitoring.

GLOSSARY OF TERMS AND ACRONYMS

Alternative procurement: “Innovative contracting practices, undertaken by state highway agencies, that have the potential to reduce the life cycle cost of projects, while at the same time maintain product quality” (FHWA 2014d).

Alternative technical concepts (ATCs): “A procedure [in which] the designers and/or contractors are asked to furnish alternative design solutions for features of work designated by the agency in its design-build Request for Proposals (RFP)” (Carpenter 2010).

Contract goals: A contract goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses that are ready, willing, and able to participate in federally funded DOT contracts. The goal must reflect the expected level of DBE participation in the absence of discrimination. U.S.DOT does not approve contract goals but does review and approve the methodology used to establish the goal. Contract recipients are not required to achieve a minimum goal but are required to make good faith efforts to achieve the goal (FTA 2007).

Construction manager at risk or construction manager/general contractor (CMAR or CMGC): The CMGC project delivery method allows an owner to engage a construction manager during the design process to provide constructability input. The construction manager is generally selected based on qualifications, past experience, or a best-value basis. During the design phase, the construction manager provides input regarding scheduling, pricing, phasing, and other project components that helps the owner design a more constructible project. At 60% to 90% design completion, the owner and the construction manager negotiate a guaranteed maximum price for the construction of the project based on the defined scope and schedule. If this price is acceptable to both parties, they execute a contract for construction services, and the construction manager becomes the general contractor. The CMGC delivery method is called the CMAR method in some states (FHWA 2014a).

Design-bid-build (DBB): “The ‘traditional’ project delivery approach [in which] the owner commissions a designer to prepare drawings and specifications under a design services contract, and separately contracts for construction, by engaging a contractor through competitive bidding or negotiation” (DBIA 2009).

Design-build (DB): Design-build is a project delivery method that combines two usually separate services into a single contract. With design-build procurements, owners execute a single, fixed-fee contract for both architectural/engineering services and construction. The design-build entity may be a single firm, a consortium, a

joint venture, or an organization assembled for a particular project (FHWA 2014b).

Disadvantaged business enterprise (DBE): A small for-profit business concern that is at least 51% owned and controlled by one or more socially and economically disadvantaged persons. DBE certification is made on the basis of onsite visits, personal interviews, reviews of licenses, stock ownership, equipment, bonding capacity, work completed, resumes of principal owners, and financial capacity. Certification is handled at the local or regional level (U.S.DOT 2014).

Disadvantaged Business Enterprise Program: A legislatively mandated U.S.DOT program that applies to federal-aid highway dollars expended on federally assisted contracts issued by U.S.DOT recipients such as state DOTs. The DBE program is carried out by state and local transportation agencies under the rules and guidelines in the Code of Federal Regulations (Title 49, Part 26). The program is designed to ensure nondiscrimination in the award and administration of DOT-assisted contracts, help remove barriers to the participation of DBEs in DOT-assisted contracts, and assist in the development of firms that can compete successfully in the marketplace outside the DBE program (U.S.DOT 2014).

General provisions: Laws or regulations that apply to all contracts of a certain type. Regulations applicable only to a particular contract are called special provisions.

Good faith efforts: The efforts made by bidders to meet a DBE contract goal. Bidders can demonstrate these efforts in one of two ways that are equally valid. First, they can meet the goal by documenting that they have obtained sufficient commitments for DBE participation. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. The Department emphasizes strongly that this requirement is an important and serious one. A refusal by a recipient to accept valid showings of good faith is not acceptable under this rule (U.S.DOT 2013).

Minority-owned business enterprise (MBE): A for-profit enterprise, regardless of size, that is at least 51% owned, operated, and controlled by a U.S. citizen who is Asian, Black, Hispanic, or Native American. Certification is handled at the local or regional level (“Certification Overview” 2014).

Operating administrations: Agencies responsible for administering the Federal DBE Program, including the Federal Highway Administration, the Federal Aviation Administration, and the Federal Transit Administration (FTA 2007).

Procurement: The combined functions of purchasing, inventory control, traffic and transportation, receiving, inspection, store keeping, and salvage and disposal operations (Minnesota 2011).

Public-private partnerships: “Public-private partnerships (P3s) are contractual agreements formed between a public agency and a private sector entity that allow for greater private sector participation in the delivery and financing of public facilities” (FHWA 2014c).

Race-conscious: A measure or program focused specifically on assisting only DBEs, including women-owned DBEs, that involves setting specific goals for the use of DBEs on individual contracts (U.S.DOT 2013).

Race-neutral: A measure or program that can be used to increase opportunities for all small businesses, not just DBEs, and does not involve setting specific goals for the use of DBEs on individual contracts (U.S.DOT 2013).

Request for proposals (RFP): “A solicitation for offers under negotiation procedures” (Shields 1998).

Request for qualifications (RFQ): “The document issued by the Owner prior to the RFP that typically describes the project in enough detail to let potential proposers determine if they wish to compete and forms the basis for requesting Qualifications Submissions in a ‘two-phase’ or ‘prequalification’ process” (DBIA 2009).

Reconsideration of good faith efforts: In the event that a bidder’s good faith effort (GFE) showing is found to be inadequate by the operational administration, the bidder can request an administrative review of the decision to ensure that attempts to show GFE were not arbitrarily dismissed and to respond to allegations of a quota-like administration of the program. Reconsideration of GFE is administered by the operating administration. The process must be completed within a brief period (e.g., 5–10 days) to minimize any potential delay in procurements. The bidder has an opportunity to meet with the reconsideration official, but a formal hearing is not required. To ensure fairness, the reconsideration official must be someone who did not participate in the original decision to reject the bidder’s showing. The operating administration must

provide a written decision on reconsideration, and there is no provision allowing for administrative appeals to U.S.DOT (U.S.DOT 2013).

Small business enterprise (SBE): SBEs adhere to industry size standards established by the U.S. Small Business Administration. For most industries, a small business is defined either in terms of the average number of employees over the past 12 months or the average annual receipts over the past 3 years. In addition, SBA defines a U.S. small business as a concern that is organized for profit; has a place of business in the United States; operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor; is independently owned and operated; and is not dominant in its field on a national basis. The business may be a sole proprietorship, partnership, corporation, or any other legal form. In determining what constitutes a small business, the definition will vary to reflect industry differences, such as size standards. Certification is handled at the local or regional level (Small Business Administration 2014).

Special Experimental Projects-14 (SEP-14): An FHWA program established in 1990 that has allowed state DOTs to evaluate nontraditional contracting techniques. The original contracting practices approved for evaluation were cost-plus-time bidding, lane rental, design-build contracting, and warranty clauses. After a period of evaluation, FHWA decided that all four practices were suitable for use as operational practices (nonexperimental). The title of SEP-14 was changed from Innovative Contracting to Alternative Contracting in 2002 (FHWA 2014d).

Traditional procurement: Methods of procuring contracts for goods and services that involve the separation of design and construction services, the qualifications-based procurement of designers, and a competitive low-bid system for construction (Trauner Consulting Services, Inc. 2007).

Women-owned business enterprise (WBE): A for-profit enterprise, regardless of size, that is at least 51% woman owned, operated, and controlled. Certification is handled at the local or regional level (“Certification Overview” 2014).

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APPENDIX A

Structured Telephone Interview Guide for State Departments of Transportation

This document serves as a rough interview guide. Actual interviews will vary depending on the history of design-build at that state DOT and the knowledge and experience of the interviewee. We may also change or add questions for the particular state transportation department depending upon what we know about the state DOT prior to the interviews.

INTRODUCTORY INFORMATION

The National Cooperative Highway Research Program (NCHRP) Transportation Research Board is conducting a study of the Federal DBE Program and alternative delivery method projects such as design-build, CMAR/CMGC, or P3. This study will review methods and approaches used and issues that state departments of transportation face when setting DBE contract goals and monitoring compliance on alternative project delivery methods. Keen Independent Research is the outside consultant directing the study.

Keen Independent is contacting representatives from state DOTs to better understand use of alternative delivery methods by states and identify states for further investigation concerning application of the Federal DBE Program on past and current projects.

INTERVIEW GUIDE

1. What has been your personal experience with design-build, CMAR/CMGC or P3 projects?

(Probe for whether involved and at what level, and with current agency or another.)
2. Our research indicates the following concerning whether there is legislation in your state that allows your state transportation department to use the following types of alternative delivery methods for projects.
 - Design-build (combines design services and construction in a single contract).
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC), which provide flexibility to involve a construction manager or contractor across both the design and construction phases of a project.
 - Public-private partnerships (P3s). P3 projects involve a private sector entity working and contracting with the government agency in the design, construction, operation, maintenance and financing of projects.
 Other comments concerning this question: _____
3. Our research indicates that your state DOT has used the following types of alternative delivery methods for projects (including projects that have not yet been bid).
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
 Other comments related to this question: _____
4. Was FHWA or other federal money used to at least partially fund those project(s)?
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)

5. Were DBE contract goals set for any of the federally funded alternative delivery method project(s)?
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
6. Has your state DOT completed any of those alternative delivery method projects?
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
7. About how many U.S.DOT-funded alternative delivery method projects has your state DOT completed since 2000? (Estimates are acceptable.)
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
8. About how many other U.S.DOT-funded alternative delivery method projects has your state DOT initiated (including pre-award) that are not yet complete?
 - Design-build
 - Construction Manager at Risk (CMAR) and/or Construction Manager/General Contractor (CMGC)
 - Public-private partnership (P3)
9. Have any of your sub-recipients (cities, counties, regional transportation agencies, or others) had U.S.DOT-funded alternative delivery method projects where they applied the Federal DBE Program?
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
10. Have any of those sub-recipient projects been completed?
 - Design-build
 - Construction manager at risk (CMAR) and/or construction manager/general contractor (CMGC)
 - Public-private partnership (P3)
11. In general, are there components of the Federal DBE Program that are challenging to apply to alternative delivery method projects? Which ones?
12. Thinking about your current or recent experiences, at what point in the project planning process is application of the DBE Program considered and/or DBE Program staff involved? (At very beginning, just when need to set a goal, etc.)
13. What is your general methodology for setting goals for alternative delivery method projects? Is it any different from traditional construction contracts? Do you set a goal at the beginning that covers the entire project? Different goals for design and construction phases?
14. How do you monitor whether the prime is complying with the Federal DBE Program in the course of an alternative delivery method project?

- 15. Is your application of the Federal DBE Program to any of these alternative delivery method projects any different from traditional design-bid-build projects? If so, how?
- 16. What have you learned from the experience applying the Federal DBE Program to any of these projects that will help you or others with future projects?
- 17. Are there consequences for the prime contractor if it does not comply with the Program? What teeth does your agency have to encourage or require compliance? (e.g., contract remedies such as liquidated damages)
- 18. Any additional comments about any federally funded alternative delivery method projects?
- 19. Any other comments or insights as we begin this study?
- 20. What information from this study would be most helpful to you?
- 21. Who should we talk to at your agency in order to learn more about the DBE program on these alternative delivery method projects? (And please provide contact information, including phone number and e-mail.)

Phone: _____

E-mail: _____

- 22. What about any prime contractors or DBEs, or others in your state? (Get names and contact info.)

APPENDIX B

Sample RFP Language for DBE Contract Goals for Design-Build (North Carolina Department of Transportation Design-Build Project from 2013)

DISADVANTAGED BUSINESS ENTERPRISE

(9-1-11)

DB1 G061

Description

The purpose of this Special Provision is to carry out the U.S. Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with Federal funds. This provision is guided by 49 CFR Part 26.

Definitions

Additional DBE Subcontractors - Any DBE submitted at the time of bid that will not be used to meet the DBE goal. No submittal of a Letter of Intent is required.

Committed DBE Subcontractor - Any DBE submitted at the time of bid that is being used to meet the DBE goal by submission of a Letter of Intent. Or any DBE used as a replacement for a previously committed DBE firm.

Contract Goal Requirement - The approved DBE participation at time of award, but not greater than the advertised contract goal.

DBE Goal - A portion of the total contract, expressed as a percentage, that is to be performed by committed DBE subcontractor(s).

Disadvantaged Business Enterprise (DBE) - A firm certified as a Disadvantaged Business Enterprise through the North Carolina Unified Certification Program.

Goal Confirmation Letter - Written documentation from the Department to the Proposer confirming the design-build team's approved, committed DBE participation along with a listing of the committed DBE firms.

Manufacturer - A firm that operates or maintains a factory or establishment that produces, on the premises, the materials or supplies obtained by the design-build team.

Regular Dealer - A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer engages in, as its principal business and in its own name, the purchase and sale or lease of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns and operates distribution equipment for the products. Brokers and packagers are not regarded as manufacturers or regular dealers within the meaning of this section.

North Carolina Unified Certification Program (NCUCP) - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of U.S.DOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with 49 CFR Part 26.

United States Department of Transportation (U.S.DOT) - Federal agency responsible for issuing regulations (49 CFR Part 26) and official guidance for the DBE program.

Forms and Websites Referenced in this Provision

DBE Payment Tracking System - Online system in which the design-build team enters the payments made to DBE subcontractors who have performed work on the project.

<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

RF-1 *DBE Replacement Request Form* - Form for replacing a committed DBE.

https://apps.dot.state.nc.us/_includes/download/external.html?pdf=http%3A//www.ncdot.gov/doh/forms/files/RF-1.pdf

SAF *Subcontract Approval Form* - Form required for approval to sublet the contract.

http://www.ncdot.org/doh/operations/dp_chief_eng/constructionunit/saf.xls

JC-1 *Joint Check Notification Form* - Form and procedures for joint check notification. The form acts as a written joint check agreement among the parties, providing full and prompt disclosure of the expected use of joint checks.

https://apps.dot.state.nc.us/_includes/download/external.html?pdf=http%3A//www.ncdot.gov/doh/forms/files/JC-1.pdf

Letter of Intent - Form signed by the contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed at the time of bid.

<http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>

Listing of DBE Subcontractors Form - Form for entering DBE subcontractors on a project that will meet this DBE goal contained elsewhere in this RFP.

Subcontractor Quote Comparison Sheet - Spreadsheet for showing all subcontractor quotes in the work areas where DBEs quoted on the project. This sheet is submitted with good faith effort packages.

http://www.ncdot.gov/business/ocs/goodfaith/excel/Ex_Subcontractor_Quote_Comparison.xls

DBE Goal

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **11%**

(A) *If the DBE goal is more than zero*, the design-build team shall exercise all necessary and reasonable steps to ensure that DBEs participate in at least the percentage of the contract as set forth above as the DBE goal.

(B) *If the DBE goal is zero*, the design-build team shall make an effort to recruit and use DBEs during the performance of the contract. Any DBE participation obtained shall be reported to the Department.

This goal is to be met through utilization of highway construction contractors and/or right-of-way acquisition firms. Utilization of DBE firms performing design, other preconstruction services, or construction engineering and inspection are not included in this goal.

Directory of Transportation Firms (Directory)

Real-time information is available about firms doing business with the department and firms that are certified through NCUCP in the Directory of Transportation Firms. Only firms identified in the directory as DBE certified shall be used to meet the DBE goal. The directory can be found at the following link: <https://partner.ncdot.gov/VendorDirectory/default.html>.

The listing of an individual firm in the directory shall not be construed as an endorsement of the firm's capability to perform certain work.

Listing of DBE Subcontractors

At the time of bid, proposers shall submit all DBE participation that they anticipate to use during the life of the contract. Only those identified to meet the DBE goal will be considered committed, even though the listing shall include both committed DBE subcontractors and additional DBE subcontractors. Additional DBE subcontractor participation submitted at the time of bid will be used toward the department's overall race-neutral goal. Only those firms with current DBE certification at the time of Price Proposal opening will be acceptable for listing in the proposer's submittal of DBE participation. The design-build team shall indicate the following required information:

Blank forms will not be deemed to represent zero participation. Price Proposals submitted that do not have DBE participation indicated on the appropriate form will not be read publicly during the opening of the Price Proposals. The Department will not consider these Price Proposals for award and the proposal will be rejected.

(1) *If the DBE goal is more than zero,*

- a. Proposers, at the time the Price Proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE Subcontractors* contained elsewhere in the contract documents in order for the Price Proposal to be considered responsive. Proposers shall indicate the total dollar value of the DBE participation for the contract.
- b. If proposers have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety.
- c. The Proposer shall be responsible for ensuring that the DBE is certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the opening of the Price Proposals, that DBE's participation will not count toward achieving the DBE goal.

(2) *If the DBE goal is zero,* proposers, at the time the Price Proposal is submitted, shall enter the word "None"; or the number "0"; or if there is participation, add the value on the *Listing of DBE Subcontractors* contained elsewhere in the contract documents.

DBE Prime Contractor

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other proposer. In most cases, a DBE proposer on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE proposer and any other DBE subcontractors will count toward the DBE goal. The DBE proposer shall list itself along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE proposer will only perform 40% of the contract work, the prime will list itself at 40%, and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A and B listed under *Listing of DBE Subcontractor* just as a non-DBE proposer would.

Written Documentation—Letter of Intent

The proposer shall submit written documentation for each DBE that will be used to meet the DBE goal of the contract, indicating the proposer's commitment to use the DBE in the contract. This documentation shall be submitted on the department's form titled *Letter of Intent*.

The documentation shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than 12:00 noon of the sixth calendar day following opening of Price Proposals, unless the sixth day falls on an official

state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

If the proposer fails to submit the Letter of Intent from each committed DBE to be used toward the DBE goal, or if the form is incomplete (i.e., both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the DBE goal, the design-build team shall submit evidence of good faith efforts, completed in its entirety, to the State Contractor Utilization Engineer or DBE@ncdot.gov no later than 12:00 noon on the eighth calendar day following opening of the Price Proposals, unless the eighth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer no later than 12:00 noon on the next official state business day.

Submission of Good Faith Effort

If the Proposer fails to meet or exceed the DBE goal, the proposer with the apparent adjusted low price shall submit to the department documentation of adequate good faith efforts made to reach the DBE goal.

A hard copy and an electronic copy of this information shall be received in the office of the State Contractor Utilization Engineer or at DBE@ncdot.gov no later than 12:00 noon of the sixth calendar day following opening of the Price Proposals unless the sixth day falls on an official state holiday. In that situation, it is due in the office of the State Contractor Utilization Engineer the next official state business day. If the design-build team cannot send the information electronically, then one complete set and nine copies of this information shall be received under the same time constraints.

Note: Where the information submitted includes repetitious solicitation letters, it will be acceptable to submit a representative letter along with a distribution list of the firms that were solicited. Documentation of DBE quotations shall be a part of the good faith effort submittal. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

Consideration of Good Faith Effort for Projects with DBE Goals More Than Zero

Adequate good faith efforts mean that the proposer took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient DBE participation. Adequate good faith efforts also means that the proposer actively and aggressively sought DBE participation. Mere pro forma efforts are not considered good faith efforts.

The Department will consider the quality, quantity, and intensity of the different kinds of efforts a proposer has made. Listed below are examples of the types of actions a proposer will take in making a good faith effort to meet the goal. They are not intended to be exclusive or exhaustive, nor is the list intended to be a mandatory checklist.

- (A) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices through the use of the NCDOT *Directory of Transportation Firms*) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest no less than 10 days prior to the opening of the Price Proposals to allow the DBEs to respond to the solicitation. Solicitation shall provide the opportunity to DBEs within the division and surrounding divisions where the project is located. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (B) 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 prime contractor might otherwise prefer to perform these work items with its own forces.
- (C) 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.
- (D) (1) Negotiating in good faith with interested DBEs. It is the proposer's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such

negotiation includes the names, 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.

- (2) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, 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 proposer of the responsibility to make good faith efforts. Proposing design-build teams are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The proposer's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the proposer's efforts to meet the project goal.
- (F) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or proposer.
- (G) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (H) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; Federal, State, and local minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs. Contact within 7 days from the opening of the Price Proposals the Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the proposer's inability to get DBE quotes.
- (I) Any other evidence that the proposer submits which shows that the proposer has made reasonable good faith efforts to meet the DBE goal.

In addition, the Department may take into account the following:

- (1) Whether the proposer's documentation reflects a clear and realistic plan for achieving the DBE goal.
- (2) The proposer's past performance in meeting the DBE goals.
- (3) The performance of other proposers in meeting the DBE goal. For example, when the proposer with the apparent adjusted low price fails to meet the DBE goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the proposer with the apparent adjusted low price could have met the goal. If the proposer with the apparent adjusted low price fails to meet the DBE goal but meets or exceeds the average DBE participation obtained by other proposers, the department may view this, in conjunction with other factors, as evidence of the proposer with the apparent adjusted low price having made a good faith effort.

If the Department does not award the contract to the proposer with the apparent adjusted low price, the Department reserves the right to award the contract to the proposer with the next adjusted lowest adjusted price that can satisfy to the Department that the DBE goal can be met or that an adequate good faith effort has been made to meet the DBE goal.

Non-Good Faith Appeal

The State Contractor Utilization Engineer will notify the design-build team verbally and in writing of non-good faith. A design-build team may appeal a determination of non-good faith made by the Goal Compliance Committee. If a design-build team wishes to appeal the determination made by the Committee, they shall provide written notification to the State Contractual Services Engineer or at DBE@ncdot.gov. The appeal shall be made within 2 business days of notification of the determination of non-good faith.

Counting DBE Participation Toward Meeting DBE Goal

(A) Participation

The total dollar value of the participation by a committed DBE will be counted toward the contract goal requirement. The total dollar value of participation by a committed DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the design-build team.

(B) Joint Checks

Prior notification of joint check use shall be required when counting DBE participation for services or purchases that involves the use of a joint check. Notification shall be through submission of Form JC-1 (*Joint Check Notification Form*) and the use of joint checks shall be in accordance with the Department's Joint Check Procedures.

(C) Subcontracts (Non-Trucking)

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract goal requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract goal requirement. If a DBE contractor or subcontractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of standard industry practices, it shall be presumed that the DBE is not performing a commercially useful function. The DBE may present evidence to rebut this presumption to the department. The department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to U.S.DOT.

(D) Joint Venture

When a DBE performs as a participant in a joint venture, the design-build team may count toward its contract goal requirement a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct, clearly defined portion of work that the DBE performs with its forces.

(E) Suppliers

A design-build team may count toward its DBE requirement 60% of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100% of such expenditures from a DBE manufacturer.

(F) Manufacturers and Regular Dealers

A design-build team may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a DBE firm for providing a bona fide service, such as providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a DBE that is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a jobsite (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.

Commercially Useful Function

(A) DBE Utilization

The design-build team may count toward its contract goal requirement only expenditures to DBEs that perform a commercially useful function in the work of a contract. 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 shall also be responsible with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, the department will 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 any other relevant factors.

(B) DBE Utilization in Trucking

The following factors will be used to determine if a DBE trucking firm is performing a commercially useful function.

- (1) The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there shall not be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may subcontract the work to another DBE firm, including an owner-operator who is certified as a DBE. The DBE who subcontracts work to another DBE receives credit for the total value of the transportation services the subcontracted DBE provides on the contract.
- (5) The DBE may also subcontract the work to a non-DBE firm, including an owner-operator. The DBE who subcontracts the work to a non-DBE is entitled to credit for the total value of transportation services provided by the non-DBE subcontractor not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE subcontractors receives credit only for the fee or commission it receives as a result of the subcontract arrangement. The value of services performed under subcontract agreements between the DBE and the design-build team will not count toward the DBE contract requirement.
- (6) A DBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. This type of lease may count toward the DBE's credit as long as the driver is under the DBE's payroll.
- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the DBE that they are subcontracted/leased to and their own company name if it is not identified on the truck itself. Magnetic door signs are not permitted.

DBE Replacement

When a design-build team has relied on a commitment to a DBE firm (or an approved substitute DBE firm) to meet all or part of a contract goal requirement, the design-build team shall not terminate the DBE for convenience. This includes, but is not limited to, instances in which the design-build team seeks to perform the work of the terminated subcontractor with another DBE subcontractor, a non-DBE subcontractor, or with the contractor's own forces or those of an affiliate. A DBE may only be terminated after receiving the Engineer's written approval based upon a finding of good cause for the termination.

All requests for replacement of a committed DBE firm shall be submitted to the Engineer for approval on Form RF-1 (*DBE Replacement Request*). If the design-build team fails to follow this procedure, the prime contractor or other affiliated companies within the design-build team may be disqualified from further bidding for a period of up to 6 months.

The design-build team shall comply with the following for replacement of a committed DBE:

(A) Performance-Related Replacement

When a committed DBE is terminated for good cause as stated above, an additional DBE that was submitted at the time of bid may be used to fulfill the DBE commitment. A good faith effort will only be required for removing a committed DBE if there were no additional DBEs submitted at the time of bid to cover the same amount of work as the DBE that was terminated.

If a replacement DBE is not found that can perform at least the same amount of work as the terminated DBE, the design-build team shall submit a good faith effort documenting the steps taken. Such documentation shall include, but not be limited to, the following:

- (1) Copies of written notification to DBEs that their interest is solicited in contracting the work defaulted by the previous DBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with DBEs for specific sub-bids, including, at a minimum:
 - a. The names, addresses, and telephone numbers of DBEs who were contacted.
 - b. A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why DBE quotes were not accepted.
- (4) Efforts made to assist the DBEs contacted, if needed, in obtaining bonding or insurance required by the design-build team.

(B) Decertification Replacement

- (1) When a committed DBE is decertified by the department after the SAF (*Subcontract Approval Form*) has been received by the department, the department will not require the design-build team to solicit replacement DBE participation equal to the remaining work to be performed by the decertified firm. The participation equal to the remaining work performed by the decertified firm will count toward the contract goal requirement.
- (2) When a committed DBE is decertified prior to the department receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the design-build team shall take all necessary and reasonable steps to replace the DBE subcontractor with another DBE subcontractor to perform at least the same amount of work to meet the DBE goal requirement. If a DBE firm is not found to do the same amount of work, a good faith effort must be submitted to NCDOT (see A herein for required documentation).

Changes in the Work

When the engineer makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the design-build team will not be required to seek additional participation. When the engineer makes changes that result in additional work to be performed by a DBE based upon the design-build team's commitment, the DBE shall participate in additional work to the same extent as the DBE participated in the original contract work.

When the engineer makes changes that result in extra work that has more than a minimal impact on the contract amount, the design-build team shall seek additional participation by DBEs unless otherwise approved by the Engineer.

When the engineer makes changes that result in an alteration of plans or details of construction, and a portion or all of the work had been expected to be performed by a committed DBE, the design-build team shall seek participation by DBEs unless otherwise approved by the Engineer.

When the design-build team requests changes in the work that result in the reduction or elimination of work that the design-build team committed to be performed by a DBE, the design-build team shall seek additional participation by DBEs equal to the reduced DBE participation caused by the changes.

Reports and Documentation

An SAF (*Subcontract Approval Form*) shall be submitted for all work that is to be performed by a DBE subcontractor. The department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the design-build team shall submit a proposed trucking plan in addition to the SAF. The plan shall be submitted prior to beginning construction on the project. The plan shall include the names of all trucking firms proposed for use, their certification type(s), the number of trucks owned by the firm, as well as the individual truck identification numbers, and the line item(s) being performed.

Within 30 calendar days of entering into an agreement with a DBE for materials, supplies or services not otherwise documented by the SAF as specified above, the design-build team shall furnish the engineer a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

Reporting Disadvantaged Business Enterprise Participation

The design-build team shall provide the engineer with an accounting of payments made to all DBE firms, including material suppliers and contractors at all levels (prime, subcontractor, or second-tier subcontractor). This accounting shall be furnished to the engineer for any given month by the end of the following month. Failure to submit this information accordingly may result in the following action:

- (A) Withholding of money due in the next partial pay estimate; or
- (B) Removal of an approved prime contractor or other affiliated companies within the design-build team from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, second-tier subcontractor) is responsible for accurate accounting of payments to DBEs, it shall be the prime contractor's responsibility to report all monthly and final payment information in the correct reporting manner.

Failure on the part of the design-build team to submit the required information in the time frame specified may result in the disqualification of that prime contractor and any affiliate companies within the design-build team from further bidding until the required information is submitted.

Failure on the part of any subcontractor to submit the required information in the time frame specified may result in the disqualification of that prime contractor or any affiliate companies within the design-build team from being approved for work on future DOT projects until the required information is submitted.

Design-build teams reporting transportation services provided by non-DBE lessees shall evaluate the value of services provided during the month of the reporting period only.

At any time, the Engineer can request written verification of subcontractor payments.

The design-build team shall report the accounting of payments through the Department's DBE Payment Tracking System.

Failure to Meet Contract Requirements

Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the 2012 Standard Specifications for Roads and Structures may be cause to disqualify the prime contractor or any affiliated companies within the design-build team from further bidding for a specified length of time.

CERTIFICATION FOR FEDERAL-AID CONTRACTS

(3-21-90)

DBI G85

The proposer certifies, by signing and submitting a design-build proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The proposer also agrees by submitting a design-build proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts that exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

APPENDIX C

Sample DBE Plan Submitted by Proposer in Response to a Design-Build RFP (Texas Department of Transportation Design-Build Project from 2013)

Attachments Not Included

WILLIAMS BROTHERS CONSTRUCTION CO., INC.

DBE Performance Plan & Subcontracting Plan

Project: Loop 1604 Western Extension Project

A handwritten signature in black ink, appearing to read "Bob Lanham", with a stylized flourish at the end.

Prepared by: Bob Lanham, President & DBE Compliance Manager

Initial Draft: 10/22/2013

Revision 1: Revision 2: Revision 3:

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Appendix #	Description
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2	Report Schedule
3	DBE Special Specification Exhibit 6 of DBA
4	Standard Professional Services Agreement
5	Standard Subcontract Document
6	Federally Required Provisions

DBE Performance Plan & Subcontracting Plan

1. Definitions

Design Build Agreement (DBA)	Part of the Contract between WBCC and TxDOT that contains all of the general business terms and conditions that drive the execution of project
Design Builder	Williams Brothers Construction Co., Inc. (WBCC)
Disadvantaged Business Enterprise (DBE)	Certified firm in accordance with 49CFR26 and Exhibit 6 of the Design Build Agreement
Instructions to Proposers (ITP)	Part of the Contract between WBCC and TxDOT that contains all of the instructions necessary to submit a responsive proposal to TxDOT and the required conditions of award and execution of the contract
Joint Check	Two-party check issued by WBCC to a subcontractor AND another party designated by the subcontractor
Prime Contract (Contract)	The collective contract between WBCC and TxDOT
Professional Services	Any design or technical services provided other than construction in the execution of the project that typically requires the possession of a license or certain credentials
Project	Loop 1604 Western Extension Design Build Project
Proposal	The document submitted by WBCC in conformance with the ITP, which was competitively scored against other shortlisted Proposers
Qualification-Based Selection (QBS)	Selection process for professional services that weights qualifications and credentials as well as price
Subcontract	The legal agreement between WBCC and a subcontractor
Subcontractor	A construction firm or professional service firm that is working under a specific agreement or contract with WBCC for the execution of a specific scope of work necessary for the successful completion of the project
Technical Provisions (TPs)	Part of the contract between WBCC and TxDOT that contains all of the technical requirements of the project as stipulated by TxDOT

For specific definitions regarding terms applicable to the DBE Program, please refer to Appendix 3 and 49 CFR 26

2. Policy Statement

Williams Brothers Construction Company, Inc. (WBCC) does not discriminate against any subcontractor firm based on race, color, sex, ethnic origin, or religious background. WBCC does not tolerate any conduct in its workforce that discriminates against any subcontractor based on the same.

WBCC actively supports and encourages the participation of disadvantaged business enterprises in the highway construction industry. WBCC seeks to preserve its reputation of DBE program excellence by maximizing DBE participation throughout the project. All quotations will be treated fairly and confidentially.

Corporate past performance in the DBE Program is excellent, averaging 150% attainment of project goals. WBCC participates in outreach to underutilized businesses through the Texas Department of Transportations' Office of Civil Rights (DBE Program).

3. Disadvantaged Business Enterprises (DBE) Commitment

WBCC is committed to fully integrating meaningful DBE participation into our team for this TxDOT Loop 1604 Western Extension Project through outreach, technical assistance/supportive services, compliance monitoring, and reporting. WBCC proposes to accomplish maximum DBE participation through an organized outreach, solicitation, and subcontracting plan.

This commitment is made in support of the project goal as stated in Section 7.1.1 of the DBA:

The overall Project DBE participation goal is 8%, which includes design and construction. WB commits to:

- (1) Submitting commitments on DBE design firms within 60 days of NTP1 (contract execution) and
- (1) Submitting commitments on DBE construction firms within 60 days of reaching 100% design completion.

WBCC is committed to implementing the project's DBE program in accordance with the federal and local guidelines found in 49 CFR Part 26 and the TxDOT DBE program. The WBCC team is aware of its obligations as stated in 26 CFR 26.53(e) and TxDOT's DBE Specification. WBCC is committed to compliance with all program regulations.

This commitment will be supported by a quarterly tracking system to guide the acquisition of subcontractor services in the achievement of the project goal. See Section 11e for details.

4. Anticipated Areas of Consulting & Contracting Opportunities

Signing	Erosion Protection	Design Survey support
Illumination	Erosion Protection	Subsurface utility services
Signals	Erosion Protection	Design support
Striping	Sanitary Sewer	Environ support services
Painting	Sidewalk	Utility relocation design
Barricades	Driveways	Quality Services
Guardrail	Riprap	Environmental Compliance
Crash Attenuators	Misc. Concrete	Constr Quality Control
Sod/Seeding	Re-Steel (furnish & place)	Constr Quality Acceptance
Landscaping	Geotechnical Services	

This list is not comprehensive but represents initial management view of possible project opportunities.

5. Outreach

Our outreach programs in partnership with TxDOT will include:

- Two DBE project information meetings.
- Incorporation of opportunities in TxDOT's project website.
- Project and contracting advertisements in local and minority publications.
- Collaboration with other organizations to present/advertise project opportunities
- Collaboration with TxDOT's Programs for DBEs, such as TAP, TBOD, and the local TUCP
- Participation at DBE-related events and conferences.
- Provision of project plans at plan rooms maintained by minority and women business organizations.

6. Professional Services Procurement

a. General

Professional services firms are chosen using a Qualification Based Selection process. The general steps followed are outlined below. The process is more subjective than construction subcontracting, which relies on prequalified firms. The criteria outlined in Section 6.d(1) must be evaluated and matched to the needs of the project and how all commitments are fulfilled.

DBE professional service firms will have their certification verified. All firms must meet TxDOT criteria for performing design services.

b. Proposal Phase Solicitations

DBE firms that were identified as meeting the requirements of Section 6d below as well, as being available as exclusive partners during the proposal phase, were engaged by teaming agreements and participated in the proposal process. Subsequent to award, negotiations will be conducted with these firms. The following firms were included in our proposal and should exceed the goal associated with professional services:

- SEA
- Gunda
- IDC
- Alliance Geotechnical Group

c. Execution Phase Solicitations

(1) The solicitation of additional professional services may become necessary during the execution of the project for a variety of reasons, such as:

- a. Added scope to the project
- b. Scope that was not fully defined during the proposal preparation
- c. Additional assistance or resources were determined to be necessary to support the project schedule
- d. The inability to successfully negotiate a scope of service or fee with a previously selected firm.

(2) A new solicitation will be issued for the services needed. The proposals submitted must be responsive to the solicitation. The following section outlines procedures for the selection process.

(3) Solicitations for proposals will be made based on need determinations discussed in the previous sections. Various resources will be used to target the subcontracting community, such as but not limited to:

- a. Use of our corporate vendor list
- b. Contacts developed from outreach events
- c. Use of TxDOT DBE directory
- d. Use of the TUCP, the local DBE certifying agency
- e. Coordination with other subcontractor advocacy groups

(4) Any DBE firm selected must have its certification verified through the TUCP directory.

d. Proposal Evaluation & Negotiation

(1) The following criteria will be used for professional services:

- a. Ability to provide the number of qualified personnel to complete the required tasks on time.
- b. Possess the requisite licenses for both the firm and personnel to authorize participation.

- c. Documentation of design project completion on time and within budget.
- d. Quality of previous project work completed, including references from past project owners (clients).
- e. Ability to start when required.
- f. Consideration of the DBE goal for the project.

(2) Attempt to negotiate scope, terms, conditions, and price with the selected Proposer.

(3) If the negotiations stall or fail, repeat the process.

7. Construction Subcontractor Procurement

a. General

It is prevalent practice in the design-build procurement process for the Design-Builder to solicit pricing from the subcontracting community based on 30% (or less) plans. This procedure puts subcontractors in financial jeopardy due to temporal variations, quantity uncertainty, material and commodity price escalations, and variability in the character and nature of the scope.

WBCC's approach will be implemented once subcontract packages have been designed to approximately 75% completion to allow for greater certainty in the bidding process. For subcontractors, this process eliminates financial risk and uncertainty on quantity/scope. Using this deferred procurement approach for the construction phase provides greater opportunity for the success of the subcontractors, especially DBE subcontractors. This process will be closely monitored and tracked. Refer to Section 11e for details.

b. Bid Package Development

- (1) As described in Section 7a, excessive risk can be transferred to a subcontractor by asking for proposals on 30% plans. Our approach is to provide more fully developed plans to the subcontracting community prior to requesting price proposals. Ideally, the plans would be 75% complete prior to releasing. This may vary based on the type of work.
- (2) Bid packages will be developed and presented for price proposals in support of the overall project construction schedule. Bid packages can be made for a single phase or segment or for multiple phases.
- (3) Bid packages will be posted in our online plan room, which is a component of our document management system. These materials will be available free of charge to any interested subcontractors where they can view or print. File format will be PDF.
- (4) Our online system will have a consolidated e-mail address where all quotations will be sent for review.
- (5) For subcontractors without access to computers, Internet access, and e-mail, hard copies of the bid packages will be made available upon request.

c. DBE Identification & Solicitations

- (1) As bid packages are completed, solicitations for price proposals will be made. Various resources will be used to target the subcontracting community, such as but not limited to:
 - a. Use of our corporate vendor list
 - b. Use of information from outreach events
 - c. Use of TxDOT DBE directory
 - d. Coordination with the TUCP, the local DBE certifying agency
 - e. Coordination with other subcontractor advocacy groups

- (2) Solicitations will contain the following information regarding the requested price proposal:
 - Project information
 - Scope or items of work
 - Date proposal is due
 - Where to view plans and specs
 - Where and how to submit price proposal
 - To whom the proposal should be directed
 - To whom all questions should be directed
- (3) First-time responders to a WBCC solicitation will be required to complete a subcontractor questionnaire and participate in an interview to determine qualifications, capabilities and capacity in order to avoid potential issues such as the DBE's failing to perform a commercially useful function.
- (4) Time is of the essence on this project. Every effort will be made to allow two weeks to respond to any price proposal solicitation; however, this cannot be guaranteed. Exceptions may be granted on a case-by-case basis for noncritical items at the discretion of WBCC.
- (5) Responsiveness – We will attempt to contact any subcontractor that did not respond to the solicitation. The reason for not quoting, if provided, will be documented.

d. Proposal Evaluation

- (1) Completeness – Each proposal will be reviewed for completeness. All pertinent contact information must be provided by the subcontractor.
- (2) Scope – Any qualifications or exceptions included in the price proposal will be noted. A dollar value (positive or negative) associated with any proposal qualifications will be assigned to the proposal.
- (3) Pricing – Proposals will be ranked according to ultimate price/cost.
- (4) Negotiations – Should the price proposal contain undesirable qualifications or exceptions, an attempt will be made to negotiate a compromise. If opportunities exist for scope modification or expansion, this will be negotiated accordingly.
- (5) Selection – A successful subcontractor will be selected with consideration of the DBE goal for the project.

8. Subcontract Agreement

- a. Subcontract agreements shall identify, define, and include those specific services, items, terms, and conditions that are consistent with the contract and the scope of work, including anticipated duration.
- b. The subcontract will be prepared and submitted with all required conditions and attachments for execution.
- c. The following items are clearly defined and included in all professional services subcontracts:
 - (1) Identification of parties
 - (2) Definition of work (scope, methods, end results)
 - (3) Definition of Client's responsibility
 - (4) Provisions for contract changes

- (5) Compensation
- (6) Method of payment
- (7) Federally required provisions
- d. The following terms and items are included in all construction subcontracts:
 - (1) Parties to the contract
 - (2) Contract start and end dates
 - (3) Scope of work, including deliverables
 - (4) Payment due dates
 - (5) Terms and conditions relating to premature contract termination
 - (6) Terms and conditions relative to undue delays
 - (7) Means to resolve claims and deposes
 - (8) Indemnification terms and conditions
 - (9) Federally required provisions
- e. Any exceptions taken by the subcontractor with regard to any of the business terms and conditions of the subcontract document will be negotiated (that is in the purview to negotiate).
- f. Upon complete execution of the document, a copy will be provided to TxDOT.
- g. See Appendix 4 for a blank “DRAFT” consultant agreement
- h. See Appendix 5 for a blank “DRAFT” construction subcontract
- i. See Appendix 6 for federally required provisions.

9. Execution of the Work

- a. DBE Responsibilities
 - (1) Subcontracted work will be executed in a professional manner.
 - (2) The subcontractor will be an independent business and employer under the laws of Texas and will assume all the rights and responsibilities accordingly.
 - (3) The subcontractor will be required to diligently and faithfully execute the work covered by its agreement.
 - (4) The subcontractor will comply with all of the requirements of its subcontract and the contract.
- b. Administration
 - (1) The subcontractor will report monthly at an agreed upon recurring monthly date, its progress quantities for the previous pay period for verification by and concurrence of the Project Manager, Deputy Project Manager, or the Construction Manager.

- (2) The subcontractor will be required to carry the requisite insurance outlined in the contract. Good faith efforts (GFEs) in accordance with 49CFR25, Appendix A, Item F must be followed prior to rejecting a DBE proposal for failure to provide insurance as outlined in the contract.
 - (3) The subcontractor will comply with administrative obligations imposed by federal requirements.
 - (4) The subcontractor will be required to submit any applicable reports, such as but not limited to:
 - a. Monthly progress quantities
 - b. Daily quality control reports
 - c. Certified payrolls
 - d. DBE participation reports
- c. Direction and Management
- (1) The subcontractor will receive overall schedule and work priorities from the Project Manager, Deputy Project Manager, or Construction Manager.
 - (2) The subcontractor is an independent business and will be required to plan, manage, oversee, and execute their contracted work in accordance with project schedule and the direction of the Project Manager, Deputy Project Manager, or Construction Manager.
 - (3) The subcontractor will be a licensed participant in the contractor's document management software at a security level deemed appropriate by the Project Manager, Deputy Project Manager, or Construction Manager.
- d. Quality
- (1) The subcontractor will be obligated to abide by the Project Quality Management Plan (QMP).
 - (2) The subcontractor will be accountable for its deficient work and responsible for the implementation of the approved correction or remedy.
 - (3) The subcontractor will be responsible for initiating its own technical submittals associated with the items of work.
- e. Environment
- (1) Protection of the environment is a priority for every project. The subcontractor shall abide by the Project Comprehensive Environmental Protection Plan (CEPP).
 - (2) The subcontractor will be required to attend the project environmental briefing/training.
 - (3) The subcontractor will be required to comply with all environmental commitments on the project that have direct bearing on its work.
 - (4) The subcontractor will comply with all applicable permits, laws, and regulations governing this project and the work subcontracted.
- f. Safety
- (1) The contractor has a corporate goal of ZERO accidents. The subcontractor is required to have its own safety program or model one after the contractor's.
 - (2) The subcontractor will ensure that its safety program is no less stringent than the Project Safety & Health Plan.
 - (3) The subcontractor will comply with the Project Safety & Health Plan.

- (4) The subcontractor will participate in project safety briefings.
- (5) The subcontractor shall be responsible for the safety of its employees.
- (6) The subcontractor shall comply with all local, state, and federal safety requirements and regulations.

g. Commercially Useful Function (CUF)

- (1) Field supervisors monitor DBE work performance to verify compliance with the subcontract document, paying particular attention to whether the DBE is using its own forces and equipment. Any activity of concern will be reported to the DBE Program Coordinator or DBE Program Manager.
- (2) Work with TxDOT on DBE work schedules so that a CUF review can be scheduled and conducted early in the project.
- (3) Follow up with TxDOT on CUF findings.
- (4) Assist TxDOT as necessary on CUF monitoring throughout the course of the project.
- (5) In the event of a non-CUF finding, consult with TxDOT on:
 - a. Impacts to the project goal and the need for additional DBE credit.
 - b. Whether other administrative actions are appropriate.

h. Assistance to DBEs

- (1) WBCC shall not provide any assistance to the DBE in the general performance of its work. The term “assistance” is defined in the broadest possible sense:
 - a. Labor, equipment, or materials
 - b. Supervision
 - c. Ordering materials for the DBE from WBCC suppliers
 - d. Fuel
 - e. Any other item one would reasonably expect a viable subcontractor to provide for themselves.
- (2) The only exceptions permitted by specification and allowed by WBCC are under emergency conditions in which:
 - a. The safety of workers or the public is at risk.
 - b. The work in progress is subject to a total loss (i.e., lose a concrete pour).
 - c. The traveling public will be seriously impacted and excessive travel delays incurred.
- (3) In the event of any emergencies as defined by Section 9h(2), the Project Manager or designated representative is required to call in a report to the Compliance Manager outlining the circumstances and the assistance rendered. TxDOT will be notified immediately. The DBE Emergency Assistance Call-in Log (see Appendix 1—Forms) will be completed. The Compliance Manager will assess the value of the assistance. The value of the assistance will be deducted from the DBE’s monthly progress report.
- (4) WBCC serves as an advocate for all of its subcontractors (DBE and non-DBE) with TxDOT in the event of changes, change orders, or payment issues.
- (5) Joint Checks for DBEs
 - a. The request for a joint check must emanate from the DBE and/or its supplier. The request must be on the DBE’s letterhead or equivalent. If no joint check agreement is provided to WBCC, utilize our version (see

Appendix 1—Forms). If a joint check agreement is provided by the DBE and/or its vendor, the Chief Financial Officer (CFO) must review and edit it as necessary to maintain compliance with the DBE special provision and to provide sound legal protection for WBCC.

- b. Prior to any joint check being issued, its use must be approved by TxDOT. CFO will prepare a request using Form 2178 (see Appendix 1—Forms) signed by the Compliance Manager. The form will be submitted to the TxDOT by fax or e-mail. Copies of the DBE's request, the joint check agreement, and the associated Form 2178 will remain on file for audit purposes.
- c. CFO prepares the joint check in the amounts acceptable to the DBE and its supplier. The check will be sent to the DBE in a manner requested by the DBE (e.g., US Mail, Fed-Ex). All requirements shown on TxDOT Form 2178 will be followed as well as those outlined in governing laws, rules, and regulations. Under no circumstances will the check be mailed directly to the supplier or will the DBE be required to endorse the check on our premises for WBCC direct mailing to the supplier.

10. Payment

a. Monthly Progress Payments & Reporting

- (1) Monthly progress payments will be made by the 10th business day following payment received by WBCC for the items of work performed by the subcontractor.
- (2) A number of instances can impact payment time that are outside the control of the Contractor or higher tier consultant:
 - a. The failure of the subcontractor to provide an invoice in a timely manner.
 - b. Quality issues with the subcontractor's work.
 - c. Apparent prompt pay or violations of other federally required provisions.
 - d. Failure to pay vendors for materials purchased and used in the project.
 - e. TxDOT's failure to provide copies of pay estimates in a timely manner.
 - f. Delays by TxDOT in payments to the Design-Builder.

b. Withholding Progress Payments

- (1) Progress payments may be withheld for any violation or breach of a subcontract requirement, such as but not limited to:
 - a. Failure to comply with prompt pay requirements
 - b. Failure to be responsive to TxDOT or WBCC
 - c. Failure to comply with any subcontract provision that creates noncompliance with the contract
- (2) Efforts by WBCC will be made to expeditiously remedy any impediments so that payments can be made as soon as possible.
- (3) Any payment dispute will be reflected and reported monthly on TxDOT form 2177.

11. Reporting

a. DBE Commitment Schedule

We will submit a DBE commitment Form SMS 4901, 4901-MS, or 4901-T as applicable to TxDOT (see Appendix 1—Forms) upon selection of DBE subcontractor. Progress toward goal attainment will be monitored.

b. Monthly Reporting Schedule

DBE monthly progress will be reported on Form SMS 4903 on or about the 15th of each month. Prompt Pay Certifications, Form 2177 will be submitted by the 20th of each month (see Appendix 1—Forms and Appendix 2—Schedule).

c. Quarterly DBE Progress Tracking

A quarterly report will be generated (See Appendix 1—Forms), which will track commitments, progress, and projected outcomes for DBE participation. The report will track areas available for participation to guide solicitations when construction packages are ready for distribution.

d. Final DBE Report Schedule

We will submit Form SMS 4904 (see Appendix 1—Forms) providing the final DBE participation within 60 days after construction has been completed.

e. DBE Truckers

If truckers are to be used toward the project goal, Form SMS 2371 worksheet (see Appendix 1—Forms) will be used to track monthly utilization. A modified Form SMS 2371 may be used. In either case, the DBE trucker must sign the form.

12. Good Faith Efforts Documentation

Documentation from solicitation process as described in Sections 6 and 7 will be maintained. Should it become necessary to submit a good faith effort demonstration, documentation in accordance with Exhibit 6 of the DBA shall be followed. (See Appendix 3—DBE Specification)

13. Mentoring

a. As discussed in Section 9h, the level and type of assistance/mentoring that WBCC can provide is restricted by state and federal program regulations. To avoid contravening any programmatic rules, WBCC will work in collaboration with TxDOT. Jointly through TxDOT's programs such as TAP and TBOD, we will assess the needs of the participating DBE and small business firms by identifying areas of improvement. Training classes or workshops in collaboration with the same TxDOT programs will be offered to help them become better businesses.

b. The needs assessment will determine:

- The type of technical classes or workshops that need to be conducted
- Whether there is a specific and recurring audience
- Whether there is a genuine interest in attending by the DBE/small business firm, thus establishing frequency

c. In addition to training provided through this contract, we will work as a conduit for information for TxDOT and other educational institutions that may offer training conducive to their needs.

- d. We will collaborate with our insurance and bonding industry partners to integrate training on these financial issues with the DBE/small business firms.
- e. All training will be recorded digitally and uploaded to our electronic document management system. The training video files will be stored in “public” folders so that the training will be available to any and all interested firms. The videos will be available for downloading and sharing by the DBE/small business firms.
- f. Project briefings will be conducted with each DBE firm as it begins work on the project. Briefings will cover their responsibilities with regard to compliance with the Project Management Plan. Any performance issues will be addressed quickly to preclude any adverse impacts to quality and the financial well-being of the DBE.

14. Termination

- g. Termination for convenience of a DBE subcontractor is NOT allowed unless the prime contract is terminated for convenience by the owner.
- h. Termination may occur due to the direction of TxDOT.
- i. Termination for breach of contract may be for any action(s), including but not limited to:
 - (1) Safety/OSHA violations
 - (2) Environmental violations
 - (3) Illegal or illicit conduct (misappropriation, etc.)
 - (4) Failure to perform work according to TxDOT specifications
 - (5) Violation of DBE rules and regulations (e.g., commercially useful function)
 - (6) Nonpayment of employees or bills (materials)
 - (7) Nonresponsive to the project schedule
 - (8) Failure to provide adequate resources
 - (9) Unprofessional conduct
 - (10) A subcontractor removal request by TxDOT
- j. Any actions that could lead to termination for a DBE subcontractor must be documented and forwarded to TxDOT.
- k. Adequate opportunities must be afforded to the DBE to remedy deficiencies in accordance with the terms of the subcontract.
- l. Consultation with and approval by TxDOT must occur prior to taking any termination action for a DBE subcontractor.

15. Replacement

- a. If the DBE is part of the project goal and the DBE quits or is terminated, WBCC should solicit new quotations for the remaining work from other DBEs or solicit quotations for other work available for DBEs.
- b. Submit to TxDOT for approval following the Contract Award procedures.
- c. If no DBEs can be found to fulfill the goal, document and submit Good Faith Efforts. (See Sections 6, 7, and 12 for procedures.)

16. DBE Program Oversight

- a. Corporate:
 - (1) Compliance Manager – Robert C. (Bob) Lanham, PE, President
 - (2) Program Administration – Corina Taylor, Admin. Asst.
- b. Project:
 - (1) Project Manager – Leon Wright
 - (2) Deputy Project Manager – Mac Qualls
 - (3) Construction Manager – Keith Mittel
 - (4) Document Manager – Lynette Birdsong

APPENDIX D

Sample DBE and Workforce/EEO Project Plans Submitted by Proposers in Response to a Design-Build RFP (The Louisville–Southern Indiana Ohio River Bridges Project, a Collaboration Between the Kentucky Transportation Cabinet and Indiana DOT)



DBE AND WORKFORCE/EEO PROJECT PLAN HIGHLIGHTS

- Held our own Open House and Outreach event on July 17, 2012
- Created a database of more than 180 DBE/SBE/MBE/WBE firms based on outreach efforts to date
- Conducted a Capacity Building Seminar for “How to Estimate & Bid a Design Build Project” on July 31, 2012 in Jeffersonville, Indiana
- Used a proven approach that resulted in our team exceeding goals on several large design build projects, including MoDOT 554 Bridges and kelCON
- Built strong local relationships from work on local projects such as the I-265 Watterson Expressway and the McAlpine Lock Replacement
- Organized a DBE/EEO Steering Committee led by Anthony Mathis, who served on the Executive KentuckianaWorks Board and has led the way in minority relations for the City of Louisville with extraordinary participation results on projects



DBE AND WORKFORCE/EEO PROJECT PLAN

UNDERSTANDING

Ohio River Transportation Constructors understands that the inclusion of Louisville and Southern Indiana businesses, workforces, communities, and KYTC is not only a requirement, but is essential to the project’s overall success and long-term sustainability of the region. We recognize the LSIORB Downtown Crossing goals below:

- Disadvantaged Business Enterprise (DBE) goal of 8%
- Workforce/Equal Employment Opportunity (EEO) goal of 15% minority workforce utilization
- Workforce/EEO goal of 10% female workforce utilization

We have familiarized ourselves with the “Building Bridges to Opportunities” program to exceed the minority and female workforce utilization goals. We recognize this is a KYTC-approved, on-the-job training (OJT) program used to identify individuals ready to work on the project. This work readiness program will be used to provide soft skills prior to any individuals starting work in their respective trade.

APPROACH

Ohio River Transportation Constructors has been in Louisville for more than a year gathering DBE information. Our approach began with team members reaching out to local DBEs that we have worked with previously, resulting in several successfully established relationships. In addition, we have met with over 180 companies and will continue outreach efforts, including soliciting quotes from DBEs, through November 15, 2012 when our price proposal is due and after award. We have developed a comprehensive DBE and Workforce/EEO Project Plan approach that is flexible and can be modified as conditions merit. Our team will use the following proactive measures to

ensure meaningful participation by disadvantaged businesses on this project:

- Divide the work into small package sizes
- Identify and resolve issues that could become a burden for DBE firms
- Monitor and facilitate efforts toward exceeding the participation goals as shown in Figure 1
- Provide expedited payments to alleviate cash-flow problems for subcontractors
- Communicate upcoming solicitations through a variety of outreach methods, including a broadcast e-mail to notify contractors and suppliers about our outreach events, advertisements in local media and industry related publications; attendance at conferences and chamber meetings; and conducting specialized training
- Develop a community-based EEO job development and training program by partnering with the Urban League, Job Corps, KentuckianaWorks, Associated Builders and Contractors, Inc., and local college workforce programs

CLIENT TESTIMONIAL REGARDING ALICIA TAORMINA’S SUCCESSFUL DIVERSITY OUTREACH ON THE LA/CYGNE ENVIRONMENTAL RETROFIT PROJECT

Through Alicia Taormina’s efforts over this past year, she has established a positive image for Kiewit in the community. Kiewit is now recognized as a firm that supports and promotes supplier diversity actively. Alicia’s diligent networking and outreach efforts have certainly been recognized.

Alicia’s success at this has enabled Kiewit to award \$9.9 million to diverse suppliers on KCP&L’s LaCygne Environmental Retrofit project. KCP&L is committed to supplier diversity efforts and we understand that supporting local and diverse businesses is critical to the success of the communities we and our customers serve.

Valerie Covazo
Supplier Diversity Manager
KCP&L, LaCygne Environmental Retrofit

FIGURE 1: DBE/EEO WORKFORCE SUCCESS



- Meet with DBE firms on a one-on-one basis to provide assistance in understanding the contract, specifications, scopes of work, and project schedule

This plan will allow our team to work with DBEs and the local workforce to maximize the skills and expertise that these firms offer, while increasing their knowledge and business management skills. Our DBE/EEO Plan Coordinator, Alicia Taormina, has served in a similar role on several large design build projects, such as the MoDOT 554 Bridges, and is experienced in exceeding DBE and Workforce EEO goals.

Our experience on several local and national projects has shown that a detailed plan will empower firms to succeed in developing their business and will enrich the DBE programs in both the Commonwealth of Kentucky and the State of Indiana.

4.1 DBE EXPENDITURE GOAL

Commitment to DBEs

Our approach to meet the 8% DBE participation goal begins by providing qualified DBE firms with sufficient bidding information to communicate a clear understanding of the work packages and all scope requirements as shown in Figure 2. We will also provide assistance and training on how to submit a compliant and cost-effective proposal, and how to successfully execute a subcontract. Our

DBE STEERING COMMITTEE

We have organized an internal DBE Steering Committee to help our team exceed the DBE/EEO requirements. The group will be led by Anthony Mathis, who successfully led DBE and minority inclusion efforts on the KFC Yum! Center project.



team has a strong history of providing meaningful opportunities to small, local, and disadvantaged businesses in the Louisville-Southern Indiana area and we look forward to continuing those strong relationships.

Ohio River Transportation Constructors will continue to support and educate the local DBE and small business community on the design build process. Part of that support will be ensuring firms only go through the bid process once. We will wait to go out for pricing until our design plans are complete, thereby saving considerable time, effort, and money while allowing firms to bid competitively.

Benefits to the Local Community

The LSIORB Downtown Crossing project will create and provide hundreds of jobs for the local workforce and subcontractors during the design and construction phases. Ohio River Transportation Constructors will draw on the local workforce to fill positions created by this project as well as existing relationships we have with local contractors from having worked on the Ohio River for decades. Our extensive partnering experience has allowed us to recognize that we cannot build a project, especially of this size, without the support and inclusion of local contractors and workforce.

Our team will use local equipment and material suppliers in the execution of work on this project. We recognize that the true value in using local workforce, subcontractors, and equipment and material suppliers is realized by developing these individuals and firms so they can sustain efforts from this project to the next and continue providing returns to the local community for years to come. Our team is dedicated to training, mentoring, and promoting sustained success for our people and our subcontractors.

Prior Experience Exceeding DBE Goals

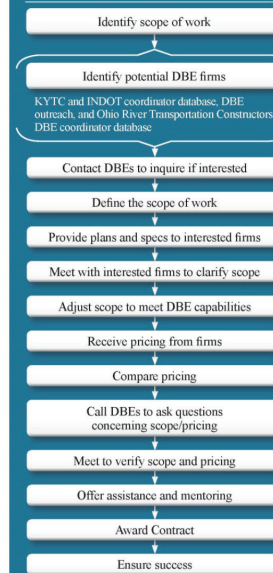
Table 1 illustrates our past experience exceeding project DBE goals. On the MoDOT 554 Bridges project, the project team was committed to providing the DBE community ample opportunities for participation throughout the duration of the project. To achieve the goal of 7% participation, the team designated an approximate goal per annual period, and has already exceeded the goal with roughly one year of construction still remaining.

TABLE 1. PREVIOUS EXPERIENCE EXCEEDING DBE GOALS

Project Name	DBE Goal	Achieved
MoDOT 554 Bridges	7%	7.13% to date
I-264 Watterson Expressway	6%	11.5%
DFW Connector	7.34%	13.22%
ICC-Contract B	20%	26.59%
kelCON	13%	14.4%
McAlpine Lock Replacement	10.0%	14.0%
Olmsted Guidewalls	5.0%	9.45%

The DBE subcontract team, led by Alicia Taormina, offered participating DBEs extensive resources to execute their work successfully. The team’s efforts assisted qualified DBE subcontractors, subconsultants, suppliers, and vendors that were interested in project participation. The team was able to utilize the participation goals outlined in the plan as a performance monitoring tool against the contract documents and federal regulations.

FIGURE 2: DBE PROCESS



Our proven process combines the experience of four construction firms and two design firms. We have developed a DBE process that will ensure we follow each step to meet the 8% DBE goal.



By continually monitoring DBE participation levels, the team was able to demonstrate to the client, MoDOT, a uniform distribution of DBE subcontracts by period, properly allocating DBE participation according to the volume of anticipated work.

4.1.a Kentucky and Indiana Certified DBEs

Identifying DBEs and Small Local Businesses

Ohio River Transportation Constructors will follow the DBE solicitation process shown in Figure 2 on the previous page. Our team has already begun the process by using the DBE directories of KYTC, INDOT, Tri State Minority Supplier Development Council (TSMSSDC), Small Business Administration (SBA), and the Louisville Metro Economic Development Office to produce an initial pool of firms that we solicited for the LSIORB Downtown Crossing project. From these databases, we selected firms with work codes that matched the project's needs and tailored our outreach efforts toward this group of DBE firms.

Our team also partnered with several organizations to establish best practices, increase participation of DBE firms in the area, and understand local capacities and demographics. To ensure success of the project, our team members have done the following:

- Held our own Open House and Outreach event on July 17, 2012 (Figure 3)
- Held a Capacity Building Seminar for "How to Estimate & Bid a Design Build Project" on July 31, 2012 in Clarksville, Indiana

- Met with:
 - More than 180 DBE and small businesses in the community
 - TSMSSDC
 - Louisville Center for Women's Business
 - Louisville Metro Economic Growth & Innovation Department
 - SBA
 - Greater Louisville Chamber of Commerce
 - Hispanic Latino Business Council

FIGURE 3: SUBCONTRACTOR INFORMATION SESSION BULLETIN

Ohio River Transportation Constructors
Event
July 17 3-5pm

Join us for a Subcontractor Information Session to learn about the project, partnering opportunities, and key dates.

The Seebach Hilton, Ballroom East & West
500 South Fourth Street
Louisville, KY 40202-2598

RSVP to: ORB.DB@www.com or
618.988.8100 (ext. 200) on July 13
www.ohioriverttransportation.com

Our team has been soliciting DBE firms since 2011, including hosting Open House events to discuss the project, partnering opportunities, and key dates.

- Participated in:
 - TKT and Associates outreach event
 - Indiana Department of Administration Minority & Women's Business Enterprises (MWBE) Certification Clinic
 - Utility Expo Outreach
 - INDOT DBE Outreach
 - TSMSSDC Annual Business Opportunity Fair
 - 2012 Louisville Women's Expo
 - 2012 Minority and Women's Business Enterprises Northern Indiana Resource Fair
 - National Minority Supplier Development Council Annual Business Opportunity Fair

In the summer of 2011, Ohio River Transportation Constructors began meeting with interested DBE firms to discuss the project, future contracting opportunities, and scope capacity. Since then, our team has fostered these relationships, which will allow us to easily integrate these initial discussions into meaningful business partnerships.

Advertisements were placed in local newspapers and on the Ohio River Transportation Constructors' website (www.ohioriverttransportation.com), and invitations were sent via e-mail. (We invited more than 500 certified DBE and small local businesses as listed in the qualified DBE directories of the KYTC, INDOT, qualified MBE directory of the TSMSSDC, and the qualified SBE directory of the SBA to attend the project Open Houses that were held in July.)

As our pool of qualified DBE firms continues to be populated, Alecia Taormina, with assistance from the DBE Steering Committee, will closely evaluate the firms and assist potential firms so they are able to seek out and maximize contracting opportunities.

Refer to Table 3 on page DBE-7 for a full listing of DBE firms that our team has contacted to date.

4.1.b Past Experience

Our team brings the insight, perspective, and innovation needed to move the DBE program to the next level. Our team members have the level of passion and professionalism needed to achieve our goals and exceed KYTC's expectations.

A successful example of our team's ability to meet DBE goals is the MoDOT 554 Bridges project where we exceeded our \$34.1 million DBE goal. Since the pre-award phase in 2009, the project team has held Open House events, met with local contractors to communicate project commitment, and developed relationships with MoDOT's External Civil Rights department, the local SBA, the Kansas City Hispanic Chamber of Commerce (HCC), the Women's Center for Development, the Mid-America Minority Supplier Development Council (MAMSSDC), the American Indian Business Enterprise Council (AIBEC), the St. Louis Minority Supplier Development Council (SLMSDC), and the Metropolitan Community College in Missouri.

4.1.c Subcontracting Plan

DBE Performance Plan

Our DBE Workforce/EEO Project Plan will allow for the development, management, and implementation of our proven programs on a day-to-day basis; carrying out technical assistance activities for DBEs; including capacity building workshops shown in Figure 4; and disseminating information on the available business and subcontracting opportunities, providing firms with an equitable opportunity to complete and perform the work.

We understand the requirements of KYTC's DBE program and our team will integrate the additional Federal DBE requirements from the Code of Federal Regulations (CFR) to create an all encompassing program that allows for compliance with all applicable rules. Having an awareness of the geographical and economical area allows Ohio River

Transportation Constructors to remain an integral part of the local small business community by participating in and supporting events that directly benefit all business communities. This will let our team identify problem areas, such as groups that are historically under-represented, and formulate solutions to allow inclusion.

Part of our success is due to inclusion from our designers, subcontractors, and suppliers as demonstrated in achieving the KCP&L supplier diversity award, Figure 5, and our performance on T-REX (Figure 6). An example sub-agreement and an example DBE Subcontracting Plan Procurement and Expenditure Report are available in Volume 1-Appendix.

Reporting

Monthly reporting of the progress on the project will include the following items:

- Name of the DBE subcontractor
- Scope of work
- Total dollar amount of the subcontract
- Amount paid under the subcontract as of the end of the month, as well as total to date
- Total dollar amount retained
- Certification of release of retainage to subcontractors within 30 calendar days of the subcontractor's satisfactory completion of the work (in accordance with 49 CFR 26.29)
- Expected completion date of subcontract
- Narrative summary stating our team's current progress on the project, current outreach efforts, whether or not we are on target to meet goals, and if not, providing a written plan to remedy the deficit

Dispute Resolution Process

All disputes will be addressed within 10 days of receipt of notice. Our team will capitalize on our DBE/EEO Steering Committee to assist in any dispute resolution with our DBE subcontractors. This will allow for additional oversight and have the benefit of community leaders' past experiences to navigate the dispute resolution process.

Effective and Timely Communication with DBE Subcontractors

All communication will be timely, whether through phone or e-mail communications, to help ensure continued success by all parties involved.

Assistance with Insurance and Bonding

Personal assistance and workshops for bonding and insurance requirements will be offered throughout the life of the project as we anticipate an ongoing need for new DBE firms. These workshops allow interested DBEs an opportunity to ask questions, review subcontract quotations, and improve their ability to obtain insurance and/or bonds.

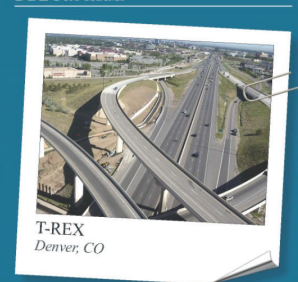
Managerial and Technical Performance Reviews

Our team will help contribute to the success of DBEs even after contract award. By assigning a Subcontract manager to each firm, our team will provide assistance, mentoring, and guidance for all DBE firms on the project. This will allow for a more personal approach in helping DBEs grow their businesses and achieve long-lasting success. We will help companies maximize their skills by providing the opportunity to have the same training and resources we offer our joint venture employees.

Invoice and Payment Process

Alecia Taormina will attend scheduling meetings to identify substantial completion of work areas and monitor associated payments for completed work. The involvement of Ohio River Transportation

FIGURE 6. EXPERIENCE IMPLEMENTING DBE PROGRAMS



Kiewit led the T-REX joint venture with HNTB serving as the Engineer/Architect. The entire project team received numerous accolades for its successful small business and minority subcontracting efforts.

The Kiewit team has always done a great job of turning invoices around quickly—in fact, I've been paid earlier than expected for my work on the T-REX project.

Jesse Melson, Vine St. Enterprises, subcontractor on T-REX

Kiewit's T-REX DBE program is the largest and most successful small and minority business subcontracting effort ever conducted in Colorado.

Celina Benavidez, Retired Director of Human Resources & Administration Division, CDOT (T-REX)

FIGURE 4: CAPACITY BUILDING WORKSHOP



Based on interest expressed at our Open House events, Ohio River Transportation Constructors also conducted a Capacity Building workshop on "How to Estimate and Bid a Design Build Project." This was attended by 37 different companies on July 31st in Clarksville, Indiana.

FIGURE 5: 2012 KCP&L SUPPLIER DIVERSITY AWARD



Alecia Taormina (left) recently received a Supplier Diversity award from Kansas City Power & Light for her work on the LaCygne Environmental Retrofit project.



Constructors personnel will help expedite invoice approvals and identify deficiencies that must be resolved. Within 30 days of receiving an invoice, we will pay the DBE subcontractor any undisputed amount owed, regardless of whether Ohio River Transportation Constructors has been paid. Any deficiencies or disputes will be communicated to the DBE subcontractor within 10 days of the team's receipt of the invoice. If necessary, other means to ensure prompt payment can be implemented, such as escrow agreements, if approved by KYTC. Our success is demonstrated in Figure 8.

4.2 WORKFORCE UTILIZATION GOAL

Employment Strategies
Ohio River Transportation Constructors has a proactive employment plan to recruit, hire, and train a qualified workforce to deliver the LSIORB Downtown Crossing project. We will focus on

exceeding the female and minority hiring goals outlined in the TIP by creating ample opportunities for women and minorities throughout the duration of the project. We will also provide the community with a skilled workforce that will be well-trained for future heavy civil construction projects.

Affirmative Action

Our team will use a 16-step process compliant with all equal employment opportunity regulations. The process includes meetings, recruitment, tracking and record keeping, training, promotions and policy dissemination, and allows for ease of monitoring, incorporating, and addressing issues as they arise. We report and review the results of the 16 steps on a monthly basis with the project staff and upper management. Each staff member involved in the process is held accountable to follow the steps and fulfill the good faith effort required to maximize participation by minorities and women to provide the best outcome for the local labor force, KYTC and the contractor.

Approach to Workforce Utilization, Identifying Minority and Female Persons

Our team will deliver this project in the Louisville and Southern Indiana area by utilizing a diverse and skilled local workforce. This strategy will also work to create a sense of community and ownership by all project participants. This will facilitate a project delivery that is on time and within budget. Also, by partnering with local workers, and minority and women community organizations, we will foster a relationship built on trust and a common goal. These relationships will provide additional labor resources. Operating on a similar approach as the one utilized for the DBE subcontracting, the EEO/Workforce team will be committed to meeting or exceeding the 15% minority workforce utilization and 10% female workforce utilization goal. Our team has begun the process by conducting outreach efforts with the following local agencies:

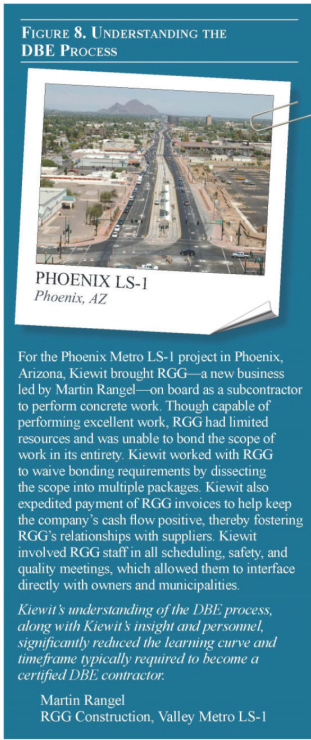
- Job Corps
- Urban League
- Louisville Center for Women's Business
- Hispanic Latino Business Council
- Simmons College
- University of Louisville Labor & Management Center
- KentuckianaWorks Board
- Associated Builders & Contractors, Inc.

Our team will use regional workforces and businesses, while complying with the regulations and policies of KYTC, INDOT, and FHWA. To supplement our team, we will appoint representatives from minority, community and business leaders to our steering committee to provide insight into the needs of the local workforce community and ensure compliance with our team's program goals and objectives. We will continue to conduct Open Houses for workforce purposes and establish partnerships with additional local colleges, and workforce agencies. Additionally, our joint venture partners are equal opportunity employers who place an emphasis on workplace diversity.

Training Programs

The team members that comprise Ohio River Transportation Constructors pride themselves on building world class projects. We are able to do this through the efforts of the craft people constructing the work. Many people want to work on our projects through reputation alone, since we have programs in place to safely get them home each night, train for advancement, and offer the ability to train others around them. The following are some of the jobsite training programs we focus on to develop our craft employees:

- Safety training including specific activities such as confined spaces and fall protection



For the Phoenix Metro LS-1 project in Phoenix, Arizona, Kiewit brought RGG—a new business led by Martin Rangel—on board as a subcontractor to perform concrete work. Though capable of performing excellent work, RGG had limited resources and was unable to bond the scope of work in its entirety. Kiewit worked with RGG to waive bonding requirements by dissecting the scope into multiple packages. Kiewit also expedited payment of RGG invoices to help keep the company's cash flow positive, thereby fostering RGG's relationships with suppliers. Kiewit involved RGG staff in all scheduling, safety, and quality meetings, which allowed them to interface directly with owners and municipalities. Kiewit's understanding of the DBE process, along with Kiewit's insight and personnel, significantly reduced the learning curve and timeframe typically required to become a certified DBE contractor. Martin Rangel, RGG Construction, Valley Metro LS-1



DBE and Workforce/EEO Project Plan

Section Focus: SKANSKA FLATIRON DRAGADOS is providing an integrated team of professionals with outstanding credentials from similar projects.

DBE COORDINATION

Arthur McKee
Independent Consultant
DBE/EEO Program Manager

The DBE/EEO Program Manager, Arthur McKee, is a former Executive Director for the KYTC Office for Business and Occupational Development and has over 30 years of experience in DBE development and workforce training programs. He has won numerous government and community awards in his years of service.



Potential DBE Work Items	Percentage of Overall Contract Price
Stay-in Place Decking	0.23%
Rebar Sub/Super	2.08%
Precast Girders	0.82%
Bridge Barrier/Appurtenances	0.19%
Bridge Demolition	0.83%
Pavement Markings	0.13%
Landscaping	0.15%
MOT	0.13%
Erosion Control	0.32%
Asphalt Paving	0.36%
Base Stabilization	0.18%
Aggregate Base Course	0.05%
Design	0.59%
Roadway Barrier	0.45%
Guardrail and Fence	1.41%
Total DBE Utilization	8.00%

DBE and Workforce / EEO Project Plan

4.0 Introduction

SKANSKA FLATIRON DRAGADOS recognizes that the Ohio River Bridges Downtown Crossing Project will have a significant positive impact on the economic development of both Kentucky and Indiana. To increase this positive economic impact, we have designed a strategic and systematic program to maximize small business utilization and job creation to support our innovative design and construction program. This people-centric focus will drive the way we design and build the Downtown Crossing.

Design. Build. Connect.

The KYTC has set an 8-percent Disadvantaged Business Enterprise (DBE) expenditure goal as well as 15-percent minority workforce and 10-percent female workforce utilization goals.

SKANSKA FLATIRON DRAGADOS is committed to using its best efforts to meet or exceed these goals and document our good faith efforts to do so. We will maximize the opportunities for disadvantaged business enterprises, minority and women workforces to participate in contracting opportunities, ensure non-discrimination in the award and administration of those contracts, and help to remove historical barriers to participation.

SKANSKA FLATIRON DRAGADOS recognizes that the first priority of a DBE and Workforce/EEO Plan is compliance with the project's goals. However, as part of our contracting approach and commitment to the community, SKANSKA FLATIRON DRAGADOS will make every effort to provide contracting opportunities for other disadvantaged business concerns such as veteran and service disabled veteran owned, minority-owned, and women-owned businesses and provide employment opportunities for other underutilized workforces, including veterans, as part of our overall project plan.

SKANSKA FLATIRON DRAGADOS pledges to demonstrate leadership through innovative programs that support and empower DBEs as well as minority and women workforces. We will provide assistance and encourage these certified contractors and individuals to participate in the project to the level of their expertise, experience and qualifications.

Diversity Goals

SKANSKA FLATIRON DRAGADOS has four diversity goals that we intend to achieve throughout the course of the project.

- 1. Provide Maximum Opportunity to DBE Firms to Meet or Exceed DBE Participation Goals.** We have embarked on a robust outreach program, outlined on the following pages, to identify and solicit DBE subcontractors, consultants and suppliers in preparation for meeting or exceeding the 8-percent DBE goal.
- 2. Maintain a Diverse and Qualified Workforce to Meet or Exceed Workforce Utilization Goals.** SKANSKA FLATIRON DRAGADOS has partnered with various agencies and created the Connection Coalition, a partnership of regional minority groups, to solicit, recruit, and train able, diverse individuals to fulfill the workforce requirements of this project. We have even extended our outreach to include veterans. According to the National Center for Veterans Analysis and Statistics as of 9/30/2010 (most recent data) Kentucky and Indiana have a combined veteran population of 827,300 individuals.
- 3. Recruit Other Disadvantaged Business Entities: Veteran, Service-Disabled Veteran, Minority, and Women Owned Businesses.** SKANSKA FLATIRON DRAGADOS has actively solicited veteran, service-disabled veteran, minority, and women owned firms in our outreach efforts to determine their interest in participating in the project.

- 4. Support Regional Economic Development.** In addition to identifying locally-based DBE firms and individuals that may participate in varied aspects of the bridge project, SKANSKA FLATIRON DRAGADOS has made concerted efforts to develop innovative ideas for providing further benefit to the local community such as our planned reuse of the Grocers building described in section 4.3 Innovative Concepts.

4.1 Ability to Meet or Exceed DBE Expenditure

Our team embraces diversity in subcontracting as a core value and understands that contracting with qualified DBE contractors, consultants and suppliers adds strength, talent, fixed assets, and local resources to our joint venture. While our approach initially focuses on the critical goal of recruiting the best DBEs for the project, we recognize that our outreach does not conclude with the submittal of this plan but continues throughout the life of the project as an institutionalized part of our commitment to small, diverse contractors.

4.1.1 DBE Participation

Our experience has taught us that each bridge project is unique and requires significant due diligence to develop and implement an appropriate DBE Plan that meets project requirements, demonstrates our good faith efforts and, at the same time, is also effective at achieving participation and sustainable business growth. The following is a detailed description of our strategic and systematic approach to achieving DBE participation for the Downtown Crossing Project.

SKANSKA FLATIRON DRAGADOS pledges to use our best efforts to solicit bids from, and to contract with, DBE Subcontractors to perform all types of work on the Project. We have included as Attachment A an affidavit stating that we will meet or exceed the Project Goal or shall submit proof of our Good Faith Efforts to do so.

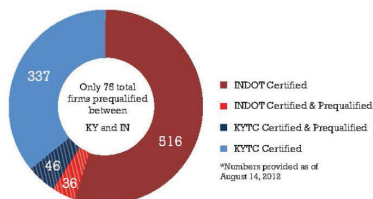


Exhibit 1: DBE Contractor Prequalification, KY and IN

Strategic and Systematic Approach. Driving our strategy is the full recognition of the limited number DBE contractors in Kentucky and Indiana at the current time that can perform heavy, civil construction of the magnitude required. While KYTC and INDOT have signed an agreement granting certification reciprocity to DBEs between the two states, there is no reciprocity for prequalification. As of August 14, 2012, of the approximately 900 certified DBE firms only 75 are prequalified in either Kentucky or Indiana.

Additionally, the Downtown Crossing project will be under construction simultaneously and in close proximity to the East End thus inevitably drawing from this same small pool of firms. Our approach to overcoming this issue of scale and experience, outlined below, is focused on increasing the pool of available, qualified contractors and incorporating consultants and suppliers into our team in innovative ways.

- Extensive Outreach.** We will ensure every potential DBE contractor is identified and contacted so we make full use of available resources.
- Scope of Work Aligned to DBE Capacity.** We will align scope of work that matches the capabilities and capacity of the DBE contractor. This allows us to identify the potential dollar amount the contractor may take on.
- Individual Assessment.** We will assess each contractor's ability to perform work successfully, identifying support

strategies, training and group-field mentoring assistance to assist the contractor in completing the work on time and on budget to meet our performance goals.

- Partnering Best Practices.** We will integrate these contractors into our team building, partnering approach that drives effective design-build projects. Integral to our proposed design and construction process are proven practices of partnering, which demand that members of the construction team work hand-in-hand with each other sharing responsibility and risk for successful work completion at all stages of the project.
- Flow Down DBE Contracting Goal.** Our prime subcontractors and subconsultants will be responsible for meeting the DBE goal or demonstrating good faith efforts to do so in their own subcontracting. This requirement will be included in all lower tier agreements and will ensure DBE contractors are successfully integrated at all levels of our team. Our evaluation of prime subcontractor and sub-consultant performance will include a metric for DBE performance as part of each prime's overall performance. Further, we will encourage, when appropriate, DBE contractors to engage other DBEs as part of their work plan.

Administrative Organization. SKANSKA FLATIRON DRAGADOS's team includes a full-time DBE/EEO Program Manager, **Arthur Mckee**, who is responsible for managing the process and assisting and guiding the team in compliance with all contract requirements and initiatives. Arthur will be responsible for implementing the DBE program for the joint venture, our major subcontractors and lower-tier subs and coordination with our design partners. He, in conjunction with assigned DBE coordination staff, will be responsible for tracking, monitoring, and reporting DBE participation on a monthly basis and serve as the repository of all good faith efforts documentation.

He will work with the project team and KYTC to maximize DBE opportunities on the project by continuing outreach throughout the contract performance. Arthur will regularly communicate with the KYTC, updating it on SKANSKA FLATIRON DRAGADOS's progress. He will report to the Project Manager and will coordinate directly



with KYTC's Disadvantaged Business Enterprise Liaison Officer (DBELO). He will also be responsible for integrating the DBE subcontractor procurement, monitoring, and reporting process into to the overall project procurement and administrative operations of the project.

Targeted Outreach Program

This section details the following information about SKANSKA FLATIRON DRAGADOS's outreach program, approach and activities:

- Integrated Team Approach
- Affirmation of Good Faith Efforts
- Outreach Process
- Multi-Faceted Strategy
- Pre-Award Outreach Activities
- Subcontractor Solicitation
- Post-Award Outreach

Integrated Team Approach. SKANSKA FLATIRON DRAGADOS understands the importance of incorporating DBE firms into all phases of the project, including design and construction. Our design team has been heavily involved in the continual outreach we have performed during the pre-award phase. URS has already secured multiple DBE firms to participate on the design team in the

areas of roadway, utilities, signalization, landscape architecture, and right-of-way acquisition. These firms include:

- Bryant Associates, Inc.
- Jacobi Toombs & Lanz, Inc.
- Global Solutions, LLC
- Vivian Lambi & Associates
- Stephen J. Christian and Associates

URS, Diversity Supplier Program of the Year

At the 29th Annual Supplier Diversity Conference in May 2013, URS was awarded the Prime Contractor Diversity Supplier Program of the Year. URS was nominated for its commitment and achievements to advance supplier diversity including increasing their small business subcontracting, minority business utilization, woman-owned business utilization and veteran and service-disabled veteran subcontracting significantly over the past five years.

As a further demonstration of our commitment to incorporating DBE firms into all phases and aspects of this project **SKANSKA FLATIRON DRAGADOS** has contracted with I.T. Business Corporation, LLC (ITBC), a diversified business development and consulting firm certified as a Minority Business Enterprise (MBE) and Service Disabled Veteran Owned Business (SDVOB).

ITBC is headquartered in Indianapolis, Indiana with additional offices in Louisville, KY and Baltimore, MD and has assisted **SKANSKA FLATIRON DRAGADOS** in developing and implementing a comprehensive, DBE outreach, compliance and monitoring program for the project. ITBC has coordinated our extensive outreach efforts described in the following section including DBE database compilation and management, planning and execution of outreach events, e-mail, phone, fax, and mail communications with prospective firms, development of the **SKANSKA FLATIRON DRAGADOS** website, and all associated marketing and advertising.

Representatives of each participating team member firm, collectively known as the DBE Steering Committee, have worked hand in hand with ITBC to ensure successful execution of all outreach efforts.

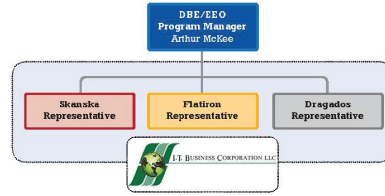


Exhibit 2: Outreach Team

Affirmation of Good Faith Efforts. **SKANSKA FLATIRON DRAGADOS** and all of its subsidiary and allied companies are committed to best practices for good faith efforts to achieve the project's DBE participation goals. As a team, we affirm:

- To ensure nondiscrimination in award and administration of contracts
- To use good faith efforts to meet the Project Goal through the use of certified and (as applicable) prequalified DBE firms
- To help remove barriers to the participation of DBEs in the performance of KYTC's contracts
- To create a level playing field on which DBEs can fairly compete for KYTC contracts
- To encourage the development of firms that can compete successfully in the construction industry outside the DBE programs

Outreach Process. At the outset of this project, **SKANSKA FLATIRON DRAGADOS** established specific goals for its diversity compliance program. We will consistently revisit these goals and refine them to ensure they meet the requirements of the KYTC as well as the transparency of our procurement process.



• **Continuous and Strategic Outreach.** **SKANSKA FLATIRON DRAGADOS** will continually identify and recruit qualified DBE subcontractors, subconsultants, suppliers and vendors for the project throughout the construction process.

• **Structured Bid Packages.** **SKANSKA FLATIRON DRAGADOS** will develop structured bid packages that meet the capacity and technical needs of DBE firms to ensure that work performance aligns with work scope.

• **Team Building and Collaboration.** **SKANSKA FLATIRON DRAGADOS** is committed to meaningfully integrate DBE firms into the full scope of the program, thus ensuring they can become value-added team members to our team on their way to being able to successfully compete outside of this project.

Multi-Faceted Strategy. **SKANSKA FLATIRON DRAGADOS**'s outreach goals will be achieved through a multi-faceted approach, including activities in these main areas:

- Monitoring of KYTC and INDOT Databases and Internal DBE Database Management
- Public Outreach Recruitment Programs for DBE firms
- Functional, Interactive Project Website
- Select One-on-One meetings with DBE Contractors
- Coordination with Regional Minority Groups
- Internal DBE/EEO Compliance Training

Activities in each of these areas are described below. Portions of the plan have already been implemented in preparation of our proposal and will continue to be followed by all construction management staff and subcontractors/consultants working on the project.

- **Monitoring of State Databases and Internal DBE Database Management.** **SKANSKA FLATIRON DRAGADOS**'s outreach team has compiled a comprehensive list of potential DBE firms from the Kentucky and Indiana certified DBE directories and has performed significant due diligence to ensure firms on our list are still in business, have active certifications, and have up to date contact information. Our outreach team monitors the addition of new firms to the database and ensures that they are contacted and added to our own internal list.
- **Public Outreach Recruitment Programs for DBE Firms.** **SKANSKA FLATIRON DRAGADOS** knows from experience that contractor recruitment is an essential element of any plan to maximize DBE participation on major projects. Our goal,

from pre-construction through completion, will be to keep all lines of communication open with local businesses and the community-at-large to raise awareness about project opportunities.

SKANSKA FLATIRON DRAGADOS has already been active in communicating with the subcontracting community with regard to the opportunities available on the project in both design and construction. We have attended the State's networking forums, hosted our own DBE outreach events, solicited hundreds of certified firms, and have created a team website where interested DBE firms can register to become involved with the project. DBE response and interest has been tracked and a significant effort has been made to ensure that they remain interested in the opportunity.

- **Functional, Interactive Project Website (orb-project.com).** The current **SKANSKA FLATIRON DRAGADOS** website provides an interactive resource where contractors can register to report their interest in the project and provide information on their qualifications. Screen Shots of the webpages are provided as Attachment B. The website is promoted through mailings, emails and newsletters distributed to DBEs, for-profit and non-profit small business advocacy groups, state, local, and community organizations, and the news media. A list of the approximately 750 firms who have self-registered on our project website is included as Attachment C.



Florida Department of Transportation

605 Business Center
Tallahassee, FL 32309-0400
December 30, 2011

MR. JAMES HUBBELL, SENIOR EXECUTIVE VICE PRESIDENT
1400 EXPRESS LANE, DRAGADOS USA
1000 W. STATE ROAD 14, STE 200
DAVIE, FL 33324

Dear Mr. Hubbell:

Thank you for your conscientious efforts during the 2010-2011 federal fiscal year to use Disadvantaged Business Enterprises (DBEs) on Department of Transportation funded projects. The State of Florida achieved 8.25% exceeding the 8.0% Disadvantaged Business Enterprise (DBE) goal established for the 2010-2011 federal fiscal year.

Your company has been named in the top 100 of the state's DBE firms. The actual percentage reported for your company is 8.77% on 1 project(s). This results in a DBE utilization grade of A+.

How do you appreciate and thank you for your interest in

I-595 Corridor Improvement Project

"Your Company (Dragados USA, Inc.) has been instrumental in the achievement of the state's goal. The actual percentage reported for your company is 8.77% on 1 project(s). This results in a DBE utilization grade of A+."

AP:aw
cc: Bob Sullivan, FTSA

With the approval of the KYTC, **SKANSKA FLATIRON DRAGADOS** will utilize a project website to enhance advertisement of contracting and procurement opportunities to DBE firms. We will also share information on the project team's involvement in local community events to position a positive focus for the project in the community.

Additional information on the website will include contact information for critical **SKANSKA FLATIRON DRAGADOS** staff responsible for overseeing DBE participation; invitations to all public meetings, with special emphasis on those relevant to the DBE communities; bidders/proposers pre-qualification criteria and DBE required commitments; access to technical assistance resources, such as small business loan programs, bonding; assistance programs, access to capital and other business development programs; profiles of DBE subcontractors who are working on the project and how they became involved; links to other related websites of interest to the DBE community.

• **Select One-On-One Meetings with DBE Contractors.** The **SKANSKA FLATIRON DRAGADOS** staff completed several one-on-one meetings with select DBE contractors. These meetings provided an opportunity for our team learn more about firms who can be placed on our bidding list. An example of the DBE Contractor Interview Form used to guide and document these meetings is included as Attachment D.

• **Coordination with Regional Minority Groups.** **SKANSKA FLATIRON DRAGADOS** has spoken with leaders of Louisville-Jefferson County Minority Groups about encouraging their client list of minority and women owned businesses to get certified and prequalified to be "ready, willing and able" to accept work on this project. These associations, listed below, have been instrumental in expanding the breadth of outreach.

- Tri-State Minority Supplier Development Council (TSMSDC)
- The Louisville Enterprise Group (LEG)
- Metro Government Economic Development Manager
- Women's Business Center (WBC) of Kentucky
- Community Ventures Corporation (CVC)

TSMSDC, an organization that serves more than 100 major corporations and approximately 300 minority businesses in Southern Indiana, Kentucky, and West Virginia has been a key player in

expanding our outreach beyond state lines. At our request, TSMSC circulated a Solicitation Letter, included as Attachment E, to neighboring Minority Supplier Development Councils including St. Louis, Indiana, Tennessee, and Ohio (Cincinnati and Cleveland).

- **Internal DBE/EEO Compliance Training.** SKANSKA FLATIRON DRAGADOS will conduct DBE compliance training for our project management team, office personnel and field personnel to ensure that all team members are knowledgeable about the goals and objectives and remain actively involved in the DBE plan's implementation.

Pre-Award Outreach Activities. A summary of activities throughout this proposal effort and concluding with the submittal of our response is presented below.

Early 2012 Preparation

The senior team members and the DBE outreach consultants convened to develop a strategic program of outreach and communication for the proposed Downtown Crossing Project. This included meetings, conference calls and development sessions to produce marketing information, pre-qualification documents and other materials to support the outreach effort.

SKANSKA FLATIRON DRAGADOS Outreach Events

SKANSKA FLATIRON DRAGADOS hosted a series of outreach events in Louisville, KY and Sellersburg, IN to attract DBE firms to the project. The timing and locations of the events were chosen to encourage maximum participation.



This series included an initial DBE Information session in Louisville on June 27, 2012 geared towards introducing our team to the prospective firms, a targeted outreach event in Southern Indiana at Ivy Tech Community College on July 12, 2012 and a second targeted outreach event in Louisville at the Muhammad Ali Center on July 17, 2012. These targeted events allowed us to ascertain the actual capabilities of available firms by introducing potential work scopes and asking firms to submit their qualifications in regard to work classes that suit their experience.



Event Advertising

To notify firms of our events, ITBC developed a rigorous awareness plan consisting of targeted advertisements, automated notifications and direct contact with potential firms and local associations.

The on-project website registration component fed all the data provided directly into our Web based Customer Relationship Management (CRM) system managed and operated by ITBC. This system administers and tracks all communications including email blasts, faxes, and phone calls. A sample CRM database lead is included as Attachment F. Registered firms could elect to receive scheduled e-mail and/or text reminders about upcoming events. In addition to using this automated electronic system for mass notifications we placed a large emphasis on personal phone calls. Our outreach team made approximately 700 personal calls to raise awareness of our events.

Materials for the Outreach Events. SKANSKA FLATIRON DRAGADOS developed a variety of graphic materials in preparation for the events:

- Event Flyers (Attachment G)
- PowerPoint Presentation (Attachment H)
- SKANSKA FLATIRON DRAGADOS Team Brochure (Attachment I)
- Expression of Intent Forms (Attachment J)
- Sign in Sheets (Attachment K)
- SKANSKA FLATIRON DRAGADOS Business Cards (Attachment L)
- Name Tags

SKANSKA FLATIRON DRAGADOS's outreach events were highly successful boasting considerable attendance, engaging group discussions, and positive participant feedback. Exhibit 3 below provides statistics on firm attendance.

Date	Location	Total # Firms	# Certified DBE
June 27, 2012	Louisville, KY	77	42
July 12, 2012	Sellersburg, IN	80	37
July 17, 2012	Louisville, KY	89	15

Exhibit 3: Outreach Event Firm Attendance

SKANSKA FLATIRON DRAGADOS understands the importance of participating in public activities pertaining to the project. In addition to hosting our own events, we were represented at the following venues:

- June 25, 2012 event hosted by the Indiana State Black Caucus in Indianapolis, Indiana
- June 29, 2012 event hosted by the Indiana Finance Authority and INDOT in Jeffersonville, Indiana
- August 15, 2012 event hosted by Indiana State Representative Maria Reardon at the Wicker Memorial Park Clubhouse in Highland, Indiana



Subcontractor Solicitation

After performing our initial outreach and establishing a solid pool of potential firms we initiated our subcontractor solicitation to secure quotes and actual commitments to perform work on the project. In this phase, SKANSKA FLATIRON DRAGADOS utilizes GradeBeam technology as our document management system. This online system allows us to communicate electronically with firms, as well as track and manage our Subcontractor and Vendor databases. Using this system we send out Bid Invitations, allow access to online bid documents, and send/receive communications. All of these functions are tracked and managed.

We began our bid solicitation process by uploading subcontractors and vendors into the GradeBeam database, making sure to include

the most current KYTC and INDOT Certified DBE directories. The database is checked for accuracy by making sure it contains valid contact information, e-mail addresses, fax and phone numbers and mailing addresses.

Once the list is fully defined we create and send out Bid Invites to all subcontractors and vendors in the database. The invitation allows the subcontractors and vendors to view the project documents provided and accept or decline the invitation. All responses and communication are carefully tracked and specific attention is paid to DBE firms. If we do not receive a response to the Bid Invite from a DBE firm, after three separate attempts, a phone call is placed to that company to better understand why they have not responded and determine if they are interested in and capable of providing a quote for the project. A master spreadsheet is created from this tracked and managed data and can be filtered to show all contact with DBE firms.

Our initial Bid Invite was sent out in August, a copy is included as Attachment M, and we have continued to solicit firms through the preparation and finalization of our estimate. The list of nearly 2,000 recipients of this initial bid invite is included as Attachment N. In addition to sending invitations to all Kentucky and Indiana certified DBEs we sent a flyer, included in this document as Attachment O, to approximately 200 out-of-state DBE firms in Ohio, Illinois, Tennessee, and Missouri. The list of firms the flyer was sent to is included as Attachment P. The flyer provided information on both the Downtown and East End Crossing Projects and explained how interested DBE firms can get certified and become involved in our bid solicitation process.

In conjunction with extending our outreach to certified DBEs in surrounding states, SKANSKA FLATIRON DRAGADOS is encouraging the participation of known and trusted subcontractors with which our partners have worked before. Freeland Construction Company, an SBA certified 8(a) small disadvantaged business in South Carolina, has had a long standing relationship with Senior Management of Dragados USA, Inc. Freeland is a full service General Contractor specializing in mechanical, electrical, and civil renovation, restoration, and rehabilitation projects and has a solid reputation within the small business community.



Freeland Construction Co. was named Minority Contractor of the Year (2011) by the National Association of Small Disadvantaged Businesses. That same year, Kenneth B. Canty, President and CEO of Freeland also won the U.S. Small Business Administration's Regional Minority Business Person of the Year.

Joseph Jordan (left) Ken Canty (center) Marie Johns (right)

This existing relationship with SKANSKA FLATIRON DRAGADOS and their relevant heavy civil capabilities make Freeland an ideal candidate for out-of-state DBE participation. SKANSKA FLATIRON DRAGADOS is working with Freeland and other uniquely qualified out-of-state DBE firms to help them become certified in Kentucky and participate on the Downtown Crossing Project. We feel our efforts to hand pick highly qualified DBE firms, particularly those who have worked with our partners before, will supplement the limited number of local DBE firms and be instrumental in successfully achieving the 8-percent DBE goal.

Post-Award Outreach

While we have implemented a significant outreach program for the preparation of this proposal, we realize that this is an on-going effort. We will continue the public awareness program after award to ensure that DBEs are aware of additional opportunities available to them with major subcontractors. This will further expand opportunities for DBE firms and help our major subcontractors meet their DBE goal requirement.

In partnership with the KYTC, SKANSKA FLATIRON DRAGADOS will continue to execute a proactive DBE outreach program to maximize DBE performance throughout the duration of the project. Representatives of the Office of Civil Rights, and specific

stakeholders should be present at all outreach meetings. In addition, we will also make sure that our subcontracting partners are invited to attend outreach meetings.

Outreach event content will include, as appropriate, the following:

- A. Provide firms with additional resources and educational materials.
- B. Update the business community about subcontracting opportunities and timing.
- C. Include opportunities in a database of the DBE and other local small business organizations for those that are available and interested in the project.
- D. Provide detailed bid package information
- E. Project renderings of designs and applicable work products to assist in understanding of work requirements.
- F. List subject matter experts available to answer questions about the project.

The Department's certification representatives should also be present to assist and/or answer questions about the process.

SKANSKA FLATIRON DRAGADOS will continue to build and maintain relationships with various stakeholders and partners in local, state, and federal government, professional business organizations, community organizations, educational institutions, and business service provider organizations. These partners will be a resource to ensure that DBE firms are effectively utilized on the project.

4.1.2 DBE Subcontracting Plan

SKANSKA FLATIRON DRAGADOS has worked diligently to develop a comprehensive DBE Subcontracting Plan that aligns with the project schedule, meets DBE participation requirements, and represents our unique approach to DBE subcontracting. This will be accomplished through a variety of methods including DBE outreach events, structured bid packages, and monitoring DBE performance to ensure that the work produced by DBE firms provides a commercially useful function.

Oversight for DBE firms will also ensure that their operations are in compliance with KYTC requirements, including using their own equipment, using their own workforce, self-performing inspections for quality safety, etc. with their own inspectors (which will be in addition to the inspections that we will be performing as a routine part of our operations and as the lead contractor ultimately responsible for the quality of the total project). We will communicate regularly with dedicated subs to ensure follow up with DBE firms in hiring, and will include dedicated subs in targeted outreach events designed to increase the participation and utilization of DBE firms on the project.

Subcontract Management

Key to the success of our DBE Subcontracting Plan is the way in which our team will package subcontracts to ensure that they are economically feasible for the DBE subcontractor. To achieve subcontractor performance success, we will apply our tailored subcontracting management approach as an on-going, continuous process for the duration of the contract. We will review all scopes of work that can be awarded to DBEs to ensure that scope of work will be matched to each DBE's capability and capacity.

To achieve this, we will apply the following strategies, among others: (1) de-bundling large scopes into smaller ones and (2) phasing scopes to ensure successful completion. To ensure we match the scope to the DBE, we will also assess each DBE's prior work experience, financial capacity, and current staffing prior to project award.

SKANSKA FLATIRON DRAGADOS's subcontract management approach focuses on how to get DBE firms to join our team, how to effectively use their performance so that their work is integrated into our overall program, and how to build the Downtown Crossing as well as their business successfully.

To ensure that the participating DBE subcontractors work is productive and results in increasing their ability to perform future projects, we will also make sure that our partnering sessions consider the needs of less experienced contractors and will include clear project participation procedures; frequent teaming sessions

SKANSKA FLATIRON DRAGADOS is committed to complying with the federal, state, and local laws related to DBE policies and regulations and will apply Skanska's standard subcontracting procedures and practices to managing all subcontracts including DBE. Our intent is to procure the best value for the project. The procurement process shall be fair and consistent and based on best value. Each vendor or subcontractor's bid will be evaluated on the following criteria.

- Safety (EMR, incident rate, OSHA violations)
- Past experience and references (relevant and successful experience)
- Financial Capability (adequate cash flow, insurance, assets, or bonding)
- Available resources (workmen, equipment, supervision)
- Work load (active, but not over committed)
- Proper scope of work
- Current DBE certification status
- Contractor prequalification held
- Demonstrated competence during the procurement
- Price

The DBT will review contract obligations for all subcontractors, and their compliance in areas including reporting, inspections, and will also review the performance of 2nd & 3rd tier subs.

Each DBE who participates on this project will be expected to perform the full extent of their subcontracts that may include direct negotiations with manufacturers and suppliers; purchasing supplies and equipment; providing labor; installing materials to put work in place; managing purchase orders for material or equipment; providing design services subcontracts, labor only services, and other services as needed. A similar program will be incorporated into our post-award management systems.

In general, the preferred subcontract type will be lump sum for a defined scope of work. Low bid contractors will be determined on a competitive bid basis. Design-build projects present higher risk for small business firms since the work scopes are not fully developed at time of bid. The team will mitigate this risk by discussing the work scope and commercial terms with small

business firms and introducing procurement mechanisms to reduce risk, such as:

- Unit price work scopes
- Small work scope packages
- Bi-monthly payment terms with the owner
- Fully-developed scope for subcontractor bidding
- DBE compliance manual

Subcontractor Oversight

The DBT will perform oversight activities for subcontractors, including monitoring good faith efforts of all dedicated subcontractors to ensure opportunities are available to DBE enterprises. As stated earlier, to maximize participation, SKANSKA FLATIRON DRAGADOS will require its subcontractors, vendors, consultants, and suppliers to commit to meeting the same DBE project goals to which we have committed. Part of our plan is to flow down the goal obligation to subcontractors and subconsultants at all tiers. This practice permits opportunities for these firms that otherwise may not have existed. In addition, SKANSKA FLATIRON DRAGADOS is including a performance metric for our prime subcontractors and subconsultants with respect to the DBE performance. The success of our smaller contractors and consultants will be part of each prime subcontractor and sub-consultant's overall success.

To ensure that all subcontractors participating on the project are fulfilling the obligations within the contract in regards to DBE program requirements, we will do the following:

- A. Monitor Good Faith Efforts of all subcontractors.
- B. Include applicable North American Industry Classification System (NAICS) codes in solicitations.
- C. Conduct post award meetings with its subcontractors where KYTC representatives will be invited to participate.
- D. Include DBE program guidelines and participation requirements as applicable in the subcontract language.
- E. Communicate regularly with subcontractors to ensure follow-up with interested DBE firms.
- F. Ensure subcontractors are involved in targeted outreach events to DBE vendors and firms.

Exhibit 4: Potential DBE Work Items

Potential DBE Work Items	Percentage of Overall Contract Price
Stay-in Place Decking	0.23%
Rebar Sub/Super	2.06%
Precast Girders	0.92%
Bridge Barrier/Appurtenances	0.19%
Bridge Demolition	0.83%
Pavement Markings	0.13%
Landscaping	0.15%
MOT	0.13%
Erosion Control	0.32%
Asphalt Paving	0.36%
Base Stabilization	0.18%
Aggregate Base Course	0.05%
Design	0.59%
Roadway Barrier	0.45%
Guardrail and Fence	1.41%
Total DBE Utilization	8.00%

Goal Tracking and Reporting

SKANSKA FLATIRON DRAGADOS will implement a system for tracking and reporting progress for the KYTC's goals for DBE firms. Effective tracking and reporting system requires active participation on the part of all members of the construction team, including project managers, subcontractors and other stakeholders. SKANSKA FLATIRON DRAGADOS commits to developing a focused communications system that will allow for constant communication and updated reports in all participation categories.

- *DBE/Procurement and Expenditure Reports.* SKANSKA FLATIRON DRAGADOS will be responsible for coordinating the compilation of DBE participation reports. The primary goal of this reporting will be to track the dollar amounts awarded to prime contractors and to summarize DBE participation in both dollar and percentage terms. These reports will be used to keep all stakeholders informed of the level of DBE involvement in the project and to demonstrate compliance with process.

A sample DBE subcontracting plan procurement and expenditure report is attached to this document as Attachment R.

- **Locally-Based Business Outreach.** In addition to tracking the level of DBE participation in the project, SKANSKA FLATIRON DRAGADOS will maintain records of all outreach efforts to locally-based and small and disadvantaged business, including organizations contacted to identify small businesses, source lists, and other databases.

In our experience, these reports can prove particularly useful in identifying broader contracting trends as well as opportunities for stepped-up outreach to local, small and disadvantaged businesses. As a result, all reports will be shared with SKANSKA FLATIRON DRAGADOS project managers and the KYTC to stimulate a collaborative effort to identify and respond to opportunities to maximize DBE involvement in the project.

Our DBE/EEO Program Manager will prepare monthly reports on DBE participation for the project. These reports will include all aspects of the implementation of the SKANSKA FLATIRON DRAGADOS Plan and will detail final contract amounts and payments made towards the Federal and State DBE initiatives.

Performance Reviews and Contract Monitoring

For all DBE contracts, our DBE/EEO Program Manager will lead the team's efforts to monitor DBE contracts once they have been awarded. Our process for managerial/technical performance reviews and contract compliance monitoring will at the minimum include the following:

- **Integrity of Contract Compliance Procedures.** SKANSKA FLATIRON DRAGADOS will establish and maintain the integrity of contract compliance files and incorporating contract compliance DBE records into the master contract file. The team's DBE compliance staff will work with the other team members to make sure that contract memoranda, decision memoranda, and correspondence to and from prime contractors and DBE contractors are routinely reviewed, analyzed, responded to,

noted in the computerized database, and properly filed in the contract file.

- **DBE Certification Confirmation.** SKANSKA FLATIRON DRAGADOS will confirm that all DBE firms awarded contracts have appropriate DBE certification and are performing a commercially useful function. The team will make sure that all firms projected to satisfy DBE goal requirements secure appropriate certification approval and are participating in the project according to the appropriate regulations. SKANSKA FLATIRON DRAGADOS will implement corrective action, as required, to make sure that the selected team members and KYTC are apprised of the status of DBE firms participating on contracts.

The DBE/EEO Program Manager will review DBE participation opportunities as a result of all change orders or modifications to contracts and evaluate their impact on the DBE Project Plan. This will be completed by the project managers in coordination with the DBE/EEO Program Manager who will confirm that the proposed DBEs are certified, capable firms. This information will be relayed to the appropriate parties to make sure that we are aware of the status of DBE firms participating on contracts

- **Utilization Plan Monitoring.** SKANSKA FLATIRON DRAGADOS will make sure that appropriate DBE utilization plans have been submitted, reviewed, and approved. DBE compliance staff will review original DBE utilization plans and the monitor the continued use of DBE firms. In addition, site/field monitoring staff will notify the DBE/EEO Program Manager of all contractors, suppliers, and consultants providing service, on a routine basis or upon request, to facilitate complete capture of all contract participation.
- **Progress Reports, Payment Schedules, Utilization Plan Refinements.** SKANSKA FLATIRON DRAGADOS will make sure that appropriate periodic DBE progress reports have been submitted and reviewed and that payments to DBEs have been verified and approved. SKANSKA FLATIRON DRAGADOS will

confirm that periodic DBE progress reports are submitted by service firms, contractors, and suppliers, as required. Such reports will be reviewed on a monthly basis to make sure that DBE firms are being meaningfully employed in a manner that is consistent with the submitted DBE utilization plan. Site/field monitoring staff will take direction from the DBE/EEO Program Manager to facilitate the timely submission of all forms. SKANSKA FLATIRON DRAGADOS will review the periodic reports to make sure that DBEs are performing on the project and are receiving payment for their services. The DBE/EEO Program Manager will prepare and distribute communication procedures and reports to make sure that the team members are aware of the status of DBE firms participating on specific contracts.

- **Implementing Corrective Actions.** Should corrective actions be required for maintaining compliance, SKANSKA FLATIRON DRAGADOS will implement corrective actions, as required, to make sure that all team members and the KYTC are aware of the status of firms participating on contracts.
- **Dispute Resolution.** In the event of any disputes, subcontractors will be required to furnish complete details as to the nature of such dispute, showing that the contractor is adequately indemnified against or immune from any loss emanating from such dispute. The contractor will work with the subcontractor and any other party involved to mediate and resolve the dispute.

Insurance and Bonding

To ensure disadvantaged businesses are financially able to participate in the project, SKANSKA FLATIRON DRAGADOS will facilitate access to independent companies that assist firms with acquiring bonding. This step will increase access to bonding and insurance for the small business community and offer a more meaningful opportunity for participation on this project. SKANSKA FLATIRON DRAGADOS will also coordinate with small business assistance programs in the area to assist DBE contractors in maximizing such resources.

DBE and Workforce/EEO Project Plan | 10

Louisville-Southern Indiana Ohio River Bridges Project
DOWNTOWN CROSSING

4 | DBE & WORKFORCE/EEO PROJECT PLAN

The Walsh DBT DBE and Workforce/EEO Plan reflects our grass-roots approach to exceeding the goals with our DBE plan identifying 8.22 percent DBE participation, establishing partnerships, and leaving a measurable impact on the community.

The Walsh DBT understands that the Project requires a diverse and well-trained workforce to stimulate economic growth and viability of Kentucky and Southern Indiana. From our experience, the Walsh DBT incorporates the following actions to achieve a successful DBE and Workforce/EEO Project Plan:

- Leadership Commitment
- Defined Goals
- Community Involvement

The commitment from the Walsh DBT Management and Lead Designers is displayed throughout this DBE and Workforce Plan. The Walsh DBT effectively assures our commitment to exceeding the 8 percent DBE participation goal and 15 percent minority and 10 percent women workforce goals in this DBE and Workforce Plan. Our proudest approach is the interpersonal contacts and personal relationships with the Louisville and Southern Indiana workforce and business community throughout this DBE and Workforce Plan.

4.1 DBE PLAN

The Walsh DBT has a proven history of exceeding the DBE and workforce/EEO goals on projects. Under the direction of 49 CFR Part 26, the following points are key components to Walsh DBT's DBE plan:

- Dedicated DBE Team
- Proactive outreach and community engagement
- Specialized DBE attention
- Packaged work scopes
- Required DBE participation from major subcontractors
- DBE progress reported to KYTC and Walsh Executive Management
- A capacity-building program to ensure a legacy

In addition to attracting, retaining, and improving subcontractors and material suppliers already prequalified with KYTC, the Walsh DBT objective is to identify companies that have potential to perform work currently and on future projects. The Walsh DBT will achieve this objective through the cumulative efforts with our designers, consultants, and subcontractors. The Walsh DBT will strengthen the individual DBE companies that participate in this Project for greater opportunities in the future.

A. DEDICATED WALSH DBT DBE TEAM

Walsh has assembled a team with over 60 years of combined experience to execute the DBE Plan. The Walsh DBT DBE Team is led by three individuals with extensive DBE/EEO experience:

- **Doug Cunningham**, DBE/EEO Project Plan Coordinator
- **Marvin Jackson**, Deputy DBE/EEO Project Plan Coordinator
- **Maurice Sweeney**, Diversity and Inclusion Advisor

THE WALSH DBT DBE/EEO TEAM

Doug Cunningham, Maurice Sweeney, and Marvin Jackson will lead the DBE efforts for the Project.



Doug Cunningham is the DBE/EEO Project Plan Coordinator. Doug's qualifications include:

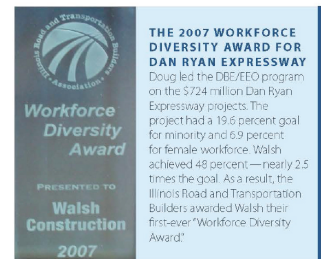
- 35 years of construction experience; 21 years working in the implementation, monitoring and enforcement of diversity programs.
- Led DBE/EEO efforts on the Dan Ryan Expressway Reconstruction Project to achieve 48 percent minority and female workforce (exceeding the goal of 19.6 percent minority; 6.9 percent female); earning Walsh the Road Builders Association "Workforce Diversity Award."
- Led DBE/EEO efforts on the Marquette Interchange Project to achieve 22 percent DBE participation (exceeding the goal of 12 percent) by working with local community leaders to develop strategies maximizing hiring of local employees and minority contractors.

Marvin Jackson is the Deputy DBE/EEO Project Plan Coordinator, who has experience on several Walsh projects that exceed M/W/DBE participation goals. Marvin's qualifications include:

- 14 years construction experience, 7 years working with public school systems, faith-based organizations, W/M/DBE firms and participation goals.
- DART Green Line Expansion Project, working with seasonal interns, Dallas Public Schools, and community organizations to achieve 42 percent M/DBE participation (exceeding the goal of 39 percent)

Maurice Sweeney is the Diversity and Inclusion Advisor for our DBE Team. Maurice brings with him an impressive resumé in community involvement and DBE participation and retention directly in the Greater Louisville Area. Maurice's resumé highlights include:

- More than 30 years of diversified experience in leadership and strategic planning
- Co-Creator and Director of the Kentucky Engineering Scholar Program
- Creator of the Minorities in Construction (MIC) Training Program



- Executive Director for the Office of Minority Affairs, Kentucky Transportation Cabinet
- Co-founder of Project BUILD, Business United in Leadership Development
- Creator and founder of Kentucky State Government's Management Trainee Program
- Founding board member of the Hispanic/Latino Business Council
- President of the Kentucky Chapter, National Association of Human Rights Workers

The Walsh DBT DBE Team has initiated personal contact with DBEs early in the project pursuit process. The initial meetings, beginning in early March, have progressed over the last seven months. The Walsh DBT recognizes that the importance and scope of the Project will require the DBE Team's full-time dedication with multiple layers of support (e.g., community, faith-based, public school, chambers of commerce, etc.). The DBE Team has selected supporting outreach/community relations firms native to the Louisville/Southern Indiana area to assist with diversity and inclusion for the Project. We have met with the following certified DBE firms and individuals expressing interest as DBE consultants:

- NAACP, Antia Fields
- Vick Strategic, Talmadge Vick

- Indiana Strategic Resource Group, Aleta Mungal
- Engaging Solutions, Venita Moore, Debra Wilson

The Walsh DBE Team, along with our consulting staff, will be co-located at the Project hub office. KYTC management and Walsh DBT management will have direct access to the DBE Team.

B. PROACTIVE OUTREACH & COMMUNITY ENGAGEMENT

The Walsh DBT realizes the importance of community engagement and personal relationships to the success of the DBE plan. The DBE Team is actively reaching out to the local business community and have identified three levels of businesses:

1. Certified and prequalified DBEs
2. Certified but not yet prequalified DBEs
3. Companies that are not certified or prequalified, yet qualified to perform the work

The Walsh DBT hosted several community outreach events to identify companies on all three levels. The events are listed in **Table 4-1**.

In addition to outreach events and direct calls to previously identified DBEs, the Walsh DBT has identified 2,033 DBE firms using published lists from KYTC and INDOT, and the database resources of the following agencies and local organizations:

- Louisville Metro Human Relations Commission
- Women Business Center of Kentucky

OUTREACH AT SIMMONS COLLEGE

The Walsh DBT DBE outreach at Simmons College hosted over 56 DBE companies and 99 individuals.



- Ohio River Valley Women's Business Council
- Louisville Hispanic/Latino Coalition
- Lexington Minority & Women Contractor Training Program
- Kentucky Minority Business Council
- National Association of Women Business Owners (NAWBO)
- Kentucky Procurement Assistance Program
- Tri-State Minority Diversity Supply Coalition
- Minority Enterprise Development of Western Kentucky

The Walsh DBT presented Project information (found at the end of this section) to DBE firms at all Walsh-sponsored DBE Outreach meetings and provided information describing our team and the Kentucky and Indiana DBE certification and prequalification procedures. The presentation included the following topics:

- Introduction of the Walsh DBT
- ORB Downtown Crossing Project Overview
- ORB Downtown Crossing Project Details
- DBE Opportunities
- DBE Certification Information
- Prequalification Information

An important part of the Walsh DBT DBE Plan includes personal contact with local community organizations and agencies. From these contacts, we received information concerning local certified DBE firms, mentoring opportunities, and local DBE capacity. The Walsh DBT met with the DBE firms, agencies and community organizations shown in **Table 4-2**.

TSMDC EXPO

DBE Team member, Marvin Jackson, talking with representatives from Houston Johnson Logistics at the TSMDC Expo.



TABLE 4-1: WALSH DBT COMMUNITY OUTREACH EVENTS HOSTED OR ATTENDED

Date	Host	Event	DBE's	Location
03/13/12	Walsh DBT	Walsh DBT hosted a DBE outreach meeting	35	Muhammad Ali Center, Louisville, KY
03/14/12	Walsh DBT	Walsh DBT hosted a DBE outreach meeting	31	Sheraton Hotel, Jeffersonville, IN
03/20/12	KYTC	Walsh DBT attended a DBE outreach meeting	42	Memorial Auditorium, Louisville, KY
03/23/12	One Southern Indiana	Diversity conference	21	Horseshoe Casino, New Albany, IN
05/16/12	NAWBO	ORB information meeting	23	Hyatt Regency, Indianapolis, IN
06/28/12	Metro Government	9th Window of Opportunity Reception	13	Water Tower, Louisville, KY
06/29/12	IFA	IFA DBE Networking Event	64	St. Stephen Church, Jeffersonville, IN
08/06/12	Walsh DBT	Walsh DBT hosted a DBE Outreach Meeting	56	Simmons College Campus, Louisville, KY

TABLE 4-2: WALSH DBT COMMUNITY AGENCIES AND ORGANIZATIONS CONTACTED

Date	Host	Event	Contact	Location
06/07/12	TMG	Walsh DBT met with TMG, Frank Bridgewater	Frank Bridgewater	TMG Offices, Louisville, KY
06/19/12	Louisville Urban League	Walsh DBT met with Engaging Solutions, Venita Moore	Venita Moore	Louisville Urban League offices, Louisville, KY
06/20/12	Louisville Urban League	Walsh DBT met with Indiana Strategic Resource Group, Aleta Mungal	Aleta Mungal	Louisville Urban League offices, Louisville, KY
06/21/12	Walsh DBT	Walsh DBT met with Kentuckiana Trucking, Kenny Aubrey	Kenny Aubrey	Crown Suites, Louisville, KY
06/29/12	Walsh DBT	Walsh DBT met with C. Lee Construction	Chip Lee	St. Stephen Church, Jeffersonville, IN
06/29/12	Walsh DBT	Walsh DBT met with Messier & Associates, Inc.	Fernando Messier	St. Stephen Church, Jeffersonville, IN
06/29/12	Walsh DBT	Walsh DBT met with J&B Steel Erectors, Inc.	Brian Rummel	St. Stephen Church, Jeffersonville, IN
06/29/12	Walsh DBT	Walsh DBT met with TKT & Associates	Christy R. Jarboe	St. Stephen Church, Jeffersonville, IN
07/12/12	TSMDC	Tri-State Minority Supplier Diversity Council Business Opportunity Expo	Suzanne Ruark	Kentucky International Convention Center, Louisville, KY
07/19/12	NAWBO	NAWBO 10th Year Anniversary Open House	Ellen Reitmeyer	Persimmon Golf Course
07/26/12	American Ready Mix	Walsh DBT met with American Ready Mix, Joe Lee Phillips	Joe Lee Phillips	American Ready Mix Offices, Louisville, KY
08/15/12	Walsh DBT	DBE/Workforce Community Inclusion Round Table and Discussion	Glenda Berry	Guthrie Mayes Offices, Louisville, KY
09/12/12	ASCE U of L	ASCE Meeting	Brooke Benton	University of Louisville

Initially, The Walsh DBT will look to the local community to fulfill the DBE goals of the Project. We understand that local involvement is important and will strive to maximize it through a concerted local outreach led by our DBE Team. Our second emphasis to obtain DBEs will be on a regional basis. The Walsh DBT will look to the surrounding states for DBE firms that are certified or can be certified and eventually prequalified by KYTC for participation in the Project. Finally, the Walsh DBT will look nationally for DBE firms that have demonstrated a positive track record with experience on other large projects similar to the Project. The Walsh DBT has national presence with 16 regional offices throughout the United States having completed large projects of this magnitude. We can draw from a network of national DBE firms when required.

A copy of the Walsh DBT's DBE Matrix is provided at the end of this Section. **Table 4-3** summarizes information from the matrix describing DBE coordination.

TABLE 4-3: DBE INVITATION/RESPONSE BREAKDOWN

DBE Contractors Identified by Walsh DBT	2,033
DBE E-Mail Invitation	1,477
DBE Attendees at Walsh Outreach Events	249
Number of Expressions of Interest	54
Number of KYTC Pre-Qualified	53

C. SPECIALIZED DBE ATTENTION

The Walsh DBT recognizes that the Project's DBE firms may require specialized attention to ensure their success. The Walsh DBT provides this attention in the following areas:

1. Assistance and Resource Programs
2. Business Management
3. Mentor-Protégé Program

The specialized attention is the combined efforts of the Walsh DBT and community agencies and organizations.

I. Assistance & Resource Programs

The trained Walsh DBT staff will meet the differing needs of small and disadvantaged businesses with a true sense of cooperation and partnership. This coordination will include the following support:

- Pre-bid scope clarification
- Bid preparation
- Contract compliance
- Payment and procedural processes
- Determination of goals and standards
- Bonding
- Cash flow management
- Material purchasing

The Walsh DBT has taken the initiative to identify community organizations and agencies that assist in disadvantage business development, including:

Women Business Center of Kentucky (WBC): WBC Director, Sharon Johnson, under the umbrella of the Small Business Administration, provides a platform for women entrepreneurs to start and grow their businesses. The WBC will be offering Women in Construction classes, which the Walsh DBT identified as a DBE assistance program.

Louisville Community Development Bank Enterprise Group (LEG): The LEG provides emerging businesses with training, workforce services and assistance. The Walsh DBT has identified the LEG as a DBE assistance agency and location for a subcontractors plan room.

Youth Build Louisville (YBL): YBL Director, Lynn Rippy, and the Walsh DBT have a shared focus on the development of lives and communities in the Louisville area. The Walsh DBT and YBL will work together on workforce development and DBE firm development through training classes at the YBL campus in Louisville, Kentucky.

Metro Bank: The Walsh DBT met with Metro Bank's President, Mr. Pedro Bryant, and have identified small business development loans that base the loan amount on contract award and two-party check systems that will allow DBE firms to add capacity without losing cash value.

In addition to the community-based resources, the Walsh DBT offers the following in-house training classes benefiting the DBE firms:

- Safety Training (e.g. OSHA 10-hour and 30-hour)
- Superintendent and Foreman Training
- Project Engineer Training
- Crane Awareness
- Profit/Loss Statement Training

The Walsh DBT will offer these in-house classes at no cost to DBE firms.

MANAGEMENT TRAINING

Walsh jobsite project management training classes will be offered to all DBE firms.



2. Business Management

Walsh Construction regularly extends technical assistance to its DBE firms. Two areas of special training offered to DBE firms on this Project include:

- Assistance with the bonding process
- Invoicing and payment procedures

Assistance with Insurance and Bonding: Walsh has introduced DBE firms to insurance and surety brokers in the past that have resulted in long-standing business relationships. Walsh offers bonding assistance to DBE firms to coordinate our corporate bonding policy requiring all subcontractors and suppliers with contracts over \$250,000 to provide payment and performance bonds unless upper management specifically waives this requirement. Walsh specifically provides for this waiver based upon the firm's DBE status. For the Project, Walsh will continue to assist DBE firms on an as-needed basis.

As part of the Walsh DBT DBE plan, we will provide assistance in overcoming limitations such as inability to obtain bonding or financing. This can be completed by simplifying the bonding process, reducing the requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses obtain bonding and financing.

Invoicing and Payment: All Walsh subcontract agreements contain a payment clause as stated in Article 3 of the Walsh Subcontract Agreement included in the Appendix to this section. This clause applies to all subcontractors whether a DBE firm or not.

- Subcontractors submit progress payment applications to Walsh on a monthly basis for work performed for the previous month.
- Walsh DBT pays progress payments to subcontractors or DBEs no later than ten days after receipt of payment from Owner.
- As a prerequisite for payment, Walsh requires subcontractors provide certified payrolls, waivers, and affidavits as specified by applicable statute.

As part of the Walsh DBT DBE Plan, we will monitor and verify work committed and performed by DBEs on the Project. This information will be reported to KYTC pursuant to 49 CFR 26.37(b) via affidavits approved by the subcontractors stating the payments made to DBE firms. The Walsh DBT will submit the affidavits within ten days after the work has been completed by the DBE firms.

DBE firms may face unique financial challenges affecting their ability to respond to projects of this size and complexity. The Walsh DBT realizes these challenges exist and commits to expediting the payment process to DBEs. This process includes weekly payments versus monthly payments thus offering financial assistance.

3. Mentor-Protégé Program

The mission of the Mentor-Protégé Program is to build effective working relationships between leaders of established companies and emerging DBE firms. This allows the emerging DBE businesses to benefit from the knowledge and experience of the established

CHIP LEE OF C. LEE CONSTRUCTION

C. Lee Construction, founded by Frederick "Chip" Lee, is an established excavation, demolition and trucking company based in Griffith, Indiana. C. Lee Construction, founded in 2005, has been working with Walsh Construction on various projects in Northern Indiana for several years. C. Lee is a certified Indiana DBE/MBE firm selected by Walsh Construction to participate in the Mentor-Protégé Program.



MESSIER LETTER TO WALSH DBT

"In addition, we are extremely excited that you and your team have offered us the opportunity to participate in your Mentorship program" - Fernando Messier, CEO



firm. The following items describe the framework of the Mentor-Protégé Program:

- Objective
- Process
- Selection
- Responsibilities

The Walsh DBT Mentor-Protégé Program is specific to the protégé's scope of work.

Program Objective: The objective of the Walsh DBT Mentor-Protégé Program is to cultivate an established small business ready to grow to the next level, promote growth in the Louisville/Southern Indiana economy, and leave a positive benchmark on the community. The program enables DBE firms to:

- Secure financing and loans, allowing them to take on additional responsibilities and scope
- Train existing staff and prepare newly-trained tradespeople to round out their workforces
- Diversify existing services and add new services
- Train and recruit to broaden their base of services

Program Process: The Walsh DBT strongly believes that being a mentor is not just subcontracting work to small businesses. The mentor-protégé relationship involves:

- Working together in monthly meetings
- Developing and implementing the protégé business plan to obtain the desired results
- 24 module classroom training provided by Mentor
- Providing guidance to allow these firms to be successful in the short and long term.

Program Selection: The companies targeted to participate will have a desire to make their business plan work and are committed to making their business successful. The Walsh DBT targets firms that are looking for a long-term relationship, which increases the likelihood of success. The Walsh DBT will team these firms with large subcontracting firms who offer opportunities to share skills and expertise in areas of design, engineering, and construction. Working through faith-based and community-based organizations with our Mentor-Protégé Program, we will target established local DBE firms in the Louisville Community.

Roles and Responsibilities: The mentor assists the protégé in developing implementation plans, which identify the needs, actions, and results required for the protégé to be successful.

The Walsh DBT management team will provide mentoring opportunities to DBE firms on the Project. Through the one-on-one mentoring experience, many of our subcontractors increase their technical capability, staff size, and ability to pursue a larger scope of future work. As a seasoned mentor, the Walsh DBT provides formalized mentoring to subcontractors who show exceptional determination and potential. In those cases, we offer side-by-side review and discussions with key staff, strategies and encouragement regarding work procurement, risk management, planning, scheduling, billing, productivity, safety, and quality.

The Walsh DBT is actively meeting with DBE firms concerning mentoring possibilities. Additionally, the Walsh DBT has mentor-protégé commitments with the following DBE firms on this Project:

- C. Lee Construction Services, Griffith, IN
Owner: Frederick "Chip" Lee
- Messier & Associates Inc., Jeffersonville, IN
Owners: Fernando and Juan Messier

A copy of the Walsh Mentor-Protégé Plan is included in the appendix of the section.

D. ENCOURAGING PARTICIPATION OF DBE FIRMS AND IDENTIFYING POTENTIAL SCOPES OF WORK AND PACKAGING OF WORK SCOPES

The Walsh DBT will structure scope packages and buildable units to provide the maximum availability of work to the DBE firms. We will consider, where appropriate, breaking bid packages in time units as well as scope units, which will aid in providing maximum opportunities to identified DBE firms limited by prequalification or bonding limits.

Dividing Work Into Economically Feasible Units

The size and complexity of the Project lends itself to dividing the work by the three Project sections:

Kentucky Approaches; the Ohio River Bridges; and Indiana Approaches. Instead of one large complex project, Walsh will construct three smaller projects concurrently.

The design and construction of the Project will extend over four construction seasons. In order to create size-appropriate bid packages (economically feasible units) for small and emerging business capabilities, the Walsh DBT will consider dividing project packages by section and construction season. This division will assist DBEs faced with prequalification and bonding limitations.

For example, if a potential DBE firm is currently prequalified to execute \$5,000,000 annually in bridge construction, but is interested in quoting \$8,000,000 over duration of the project, the Walsh DBT will issue two annual \$4,000,000 subcontractors and submit a Subcontract Request Form for \$4,000,000. A second Subcontract Request Form will be issued when the first \$4,000,000 of work is completed. This will help to achieve the DBE goal, and will help in the overall growth of the DBE company as it builds financial strength and confidence to perform larger projects. This approach maximizes the engagement of local DBE firms.

Identifying Percentage of the Total Project

The Walsh DBT has identified many subcontracting opportunities for construction and design, as well as opportunities for material supply. The Walsh DBT communicates these opportunities through personal contacts, outreach meetings and DBE opportunity seminars. A complete listing of all DBE contacts made by the Walsh DBT is included in our Project DBE Matrix, found in the appendix of this section.

The Walsh DBT will base anticipated DBE participation for the Project on the values of subcontracting packages intended for award to DBEs. We will express our anticipated DBE participation amount as a percentage of the total amount of the Project. **Table 4-4**, starting on the next page, lists these anticipated procurements by scope packages, interested DBEs, and potential percentage. As indicated in this Table, the Walsh DBT intends to exceed the 8% DBE goal for the Project.

TABLE 4-4: WALSH DBT ANTICIPATED DBE PARTICIPATION

Scope Package	Potential DBEs	PQ	Phone:	Potential %
Aggregate Bases	JAG, Inc.	Y	o 859.523.7507	0.06%
	Judy C. Harp Co., Inc.	Y	o 502.227.4572	
	POZZOLANIC Contracting & Supply Inc.	Y	o 855.255.0090	
Bridge Builders	Cherokee Construction and Excavation, LLC	Y	o 502.589.9737	0.10%
	Jones and Bourland, Inc.	Y	o 606.974.9313	
	Mickmurf	Y	o 270.843.2216	
Concrete and Flatwork - Misc.	Vic Enterprises	Y	o 270.436.6211	0.03%
	Allen Engineering, Inc.	Y	o 859.229.7362	
	Eaton Construction Co., Inc.	Y	o 740.474.3414	
	Ideal Construction	Y	c 502.365.5333	
	DC Concrete, LLC	N	o 502.415.5364	
	Martin Asphalt and Concrete Construction	N	o 317.492.7210	
DBE Consultants	Seven Seas Construction	Y	o 859.865.2063	0.02%
	Engaging Solutions	NA	o 317.283.8300	
	Indiana Strategic Resource Group	NA	o 317.607.4660	
	United Construction & Design Group	NA	o 502.451.3388	
	Vick Strategic	NA	o 812.492.4400	
Design Consultants	Corn Island Archaeology	Y	o 502.614.8828	0.33%
	Cultural Resource Analysts	Y	o 859.252.4737	
	K&S Engineers	Y	o 219.924.5231	
	Rangaswamy & Associates	Y	o 502.589.2212	
Drainage	Shrewsbury & Associates	Y	o 317.841.4799	0.01%
	TesTech, Inc.	Y	o 502.261.0462	
	Third Rock Consultants	Y	o 859.977.2000	
	Ideal Construction	Y	c 502.365.5333	
	A D E Contracting, Inc.	Y	c 859.621.7941	
	S-walk Inc., Seven Seas Construction	Y	o 859.865.2063	
Electrical	Spartan Construction Inc.	Y	o 859.371.3538	0.05%
	Leong Enterprises	N	o 502.364.7611	
	C & L General & Mechanical Maintenance Cont.	N	o 317.333.2383	
	Reyes Group, Ltd.	N	o 708.596.7100	
Excavation and Embankment Construction	Charlie's Electrical Service	Y	o 270.586.6711	0.03%
	T.E.M. Electric Company	N	o 502.454.0101	
	AAA Queen BEE Construction	Y	o 765.913.9012	
	C. Lee Construction	N	c 219.746.7288	0.03%
	Ideal Construction	Y	c 502.365.5333	

TABLE 4-4: WALSH DBT ANTICIPATED DBE PARTICIPATION

Scope Package	Potential DBEs	PQ	Phone:	Potential %
Fuel and Petroleum Supplier	Big Meadow Oil, Inc.	NA	o 270.651.5212	0.40%
	Jacobi Oil Services	NA	o 812.923.5174	
General Conditions	Mezzetta Construction	N	o 317.328.8003	0.03%
	TMG The Mardian Group	N	o 502.776.2749	
Guardrail, Attenuators, Fence, Signals	Atwood Fence Co.	Y	o 662.289.6338	0.09%
	Contractors Corporation	Y	o 270.846.0989	
	C-Tech Corporation	N	o 317.835.2745	
	Dallas Dean, Inc.	Y	o 859.734.7071	
	JAG, Inc.	Y	o 859.523.7507	
Highway Lighting, Traffic Signals, Fiber Optic Cables, ITS	N.H. Stone, Inc.	Y	o 606.247.2311	0.20%
	Professional Fence Co	Y	o 502.222.0513	
	Spartan Construction, Inc.	Y	o 859.371.3538	
Landscaping	The Hoosier Company	Y	o 317.872.8125	0.25%
	B&B Contracting	Y	o 606.298.3102	
	C.A. Fulkerson	Y	o 812.952.1777	
	Cedar Valley	Y	o 859.987.1497	
	Earth Images	Y	o 812.923.8386	
	Environmental Landscape	Y	o 859.294.5002	
	NWK Construction Inc.	Y	o 859.733.0763	
Liquid Asphalt Supplier	Summers Grading Services, LLC	Y	o 812.246.4839	0.06%
	Lestar	NA	c 859.608.9926	
Precast Beams - Furnish/Install	Choice Construction	N	o 262.703.5080	1.04%
	Javier Steel Corporation	Y	o 502.426.2008	
Quality Control and Materials Testing	Amelie Construction & Supply, LLC	N	o 724.352.4700	0.01%
	Barr & Provost	N	o 513.271.0623	
Reinforcing Steel - Furnish & Install	Resource International, Inc.	N	o 614.823.4949	2.61%
	Bar-Tie, Indiana	Y	o 812.534.3707	
	Circle City Rebar, Inc.	N	o 317.917.8566	
	Lestar, Lexington (Supplier Only)	NA	c 859.608.9926	
	J & B Steel Erectors	Y	o 513.874.1722	
SIP Forms - Furnish and Install	Javier Steel Corporation, Louisville	Y	o 502.426.2008	0.22%
	J & B Steel Erectors	Y	o 513.874.1722	
Structural Removal and Demolition	Javier Steel Corporation	Y	o 502.426.2008	0.05%
	Cherokee Construction and Excavation, LLC	Y	o 502.589.9737	
	CINCO, Inc.	Y	o 859.498.6363	
	LL Brown Construction	Y	o 502.773.3086	0.05%
	TMG The Mardian Group	N	o 502.776.2749	

TABLE 4-4: WALSH DBT ANTICIPATED DBE PARTICIPATION

Scope Package	Potential DBEs	PQ	Phone:	Potential %
Structural Steel – Furnish and Install	Bar-Tie, Indiana	Y	o 812.534.3707	0.95%
	Choice Construction	N	o 262.703.5080	
	Amelle Construction & Supply, LLC	N	o 724.352.4700	
	Javier Steel Corporation/Louisville	Y	o 502.432.2008	
	Lestar (Supplier Only)	NA	c 859.608.9926	
Structural Steel – Painting and Coating	Atlantic Painting	N	o 708.635.2040	0.50%
	Planet, Inc.	Y	o 865.354.0605	
	Antoine Adams Painting, Inc.	N	o 859.270.7111	
	Barr & Provost, Inc.	Y	o 513.271.0523	
Survey	Classide, Inc.	Y	o 502.493.2722	0.07%
	Integrated Engineering (Traffic Eng., Const. Inspection, Urban/Rural Roadway, Survey, Ped/Bike Design)	Y	o 859.368.0145	
	Jacobi, Toombs and Lanz	NA	o 812.288.6646	
	Structure Designs	NA	o 312.551.9780	
	United Construction & Design Group	NA	o 502.451.3328	
	Vision Engineering	NA	o 859.559.0516	
Sealing and Masonry Coating	Cardinal Indiana, Inc.	N	o 812.335.1084	0.22%
	Eaton Construction Co., Inc.	Y	o 740.474.3414	
Ready-Mix Concrete	Advanced Ready Mix	NA	o 502.587.1881	0.08%
	AR Concrete & Supplies, LLC	NA	o 502.968.2284	
	American Ready Mix	NA	o 502.447.5720	
	Bancroft Group	NA	o 770.407.7451	
	Mctory Trucking & Supply	NA	o 260.357.3911	
Traffic – Maintenance	K.V.W. Traffic Control Holdings, Inc.	Y	o 606.874.4030	0.01%
	M.A.S. Markers, Inc.	Y	o 317.769.7200	
	S&T Partners, LLC d/b/a Traffic Control Services	Y	o 502.550.6157	
	Spartan Construction Inc.	Y	o 859.371.3538	
Trucking	AJ's Tool Rental, Inc.	N	o 317.271.4971	0.80%
	C Lee Construction	N	c 219.746.7288	
	Hoosier Bulk Transport, Inc.	N	o 765.489.5348	
	K&A Trucking, Inc.	N	o 812.279.3632	
	LBP Trucking	N	o 270.786.2797	
	Master & Associates (Material Haul, Storm Drainage, Clearing & Grubbing)	Y	o 502.515.2451	
	Nubian Transport Management, Inc.	N	o 317.545.4285	
	Oatts Trucking	N	o 317.545.7005	
	Plina Trucking	N	o 219.836.9817	
Potential Total DBE Participation:				8.22%

After award, the Walsh DBT will communicate and track the actual DBE participation on a continual basis throughout the Project using a monthly DBE Report. The DBE Report will list each DBE firm, their estimated value of work, original contract amount, amount paid for period, and amount paid to date. A Sample DBE Report can be found at the end of this section.

E. REQUIRING MAJOR SUBCONTRACTORS TO PROVIDE DBE PARTICIPATION

Major subcontractors on this Project may include design consultants, electrical, signage, asphalt paving, excavation, aggregate suppliers, guardrail/fencing, structural and reinforcing steel erection, bridge construction, landscaping, and trucking. These subcontractors will account for 30 percent of the overall Project value. The Walsh DBT requires, and will assist, any subcontractor awarded work on the Project to meet the DBE goal for their individual scope of work whenever it is reasonably achievable.

Walsh Construction utilizes the same subcontract agreement document for all subcontractors. A sample of the Walsh subcontract agreement document can be found in the appendix of this section. All subcontractors will be required to report their DBE participation on a monthly basis throughout the life of their contract for inclusion on the DBE Report. Additionally, the Walsh DBE team and the DBE review committee will review the subcontractor DBE progress reports monthly.

F. REPORTING OF DBE PROGRESS TO KYTC AND WALSH EXECUTIVE MANAGEMENT

The Walsh DBT will provide monthly DBE status reports to KYTC and the Walsh DBT Executive Committee. This report will summarize recruitment strategies and results to date, report on outreach events, and communication to the community. Each month's report will provide the details of current DBE participation, discussions of program status and progress, and outline future strategies to achieve or exceed our stated goals.

Dispute Resolution Process

All Walsh subcontract agreements contain a dispute resolution clause (Article 11). This applies whether the subcontractor is a DBE firm or not. The law of the state

in which the project is located governs these agreements. Therefore, for this Project, Walsh will adhere to Section 105.13 Claims Resolution Process as outlined in the RFP. All claims resulting from work on the Project will follow the administrative process outlined in this section. This requirement applies to all firms.

Process for Effective and Timely Communications with DBE Subcontractors

Communication with the DBEs, small business community, and stakeholder organizations is an important component in making the DBE subcontracting plan a success.

Advertising: Dissemination of information to the community will come in multiple forms and include information on the contracting process, contact information, supply, subcontracting and consulting opportunities, and provide associated bidding time lines, technical assistance opportunities, and notice of scheduled events. The Walsh DBT will provide the information in the following manner:

- Project website
- Electronic communications through e-mail
- Quarterly newsletters
- Social media through Facebook or Twitter
- Interest form
- Feedback form

The Walsh DBT will evaluate the feedback and interest forms on a regular basis and implement strategies and changes that should be made based on information from the evaluations.

Process for Managerial and Technical Performance Reviews, Feedback, and Improvement

Not all DBE or small business firms have the managerial or technical resources necessary to compete with their industry peers thus affecting their ability to successfully respond to procurements of this size and complexity. The Walsh DBT provides DBE subcontractors direct support related to cost estimating, staffing, scheduling, contract compliance, bid preparation, financial assistance, cash flow management, job planning, certified payroll processing, and record keeping.

On this Project, the Walsh DBT will review DBE firm performance and provide feedback:

- **Daily:** Walsh jobsite personnel will work with DBE staff on a daily basis concerning job planning and job scheduling. This will include discussion of means and methods to accomplish the required construction tasks. Each DBE firm has an assigned Project Engineer or Assistant Project Manager to assist and direct the DBE firm on a daily basis.
- **Weekly:** The Walsh DBT encourages attendance at weekly job progress meetings by DBE firms to discuss important project topics and future scheduling requirements.
- **Monthly:** Each month, the Walsh DBT will review and discuss the monthly progress payment application, certified payroll submittals, monthly schedule updates, and other record keeping requirements.
- **Annually:** The Walsh DBT will review, verify, and report to KYTC the DBE firms completed work amount that contributes to DBE Participation Goal.

G. ONGOING POST BID ACTIVITY LEGACY

The nature of the design-build process provides for potential post-bid involvement of DBE firms. Through the pre-bid period outreach events and personal contacts we have created an extensive list of potential DBE firms. As the design and construction efforts progress, the Walsh DBT will continue to evaluate the work available correlating to the capabilities of the potential DBE firms. We are committed to providing opportunities to the DBE community throughout the duration of the project.

The Walsh DBT shares the KYTC commitment to building a long term legacy of expanded capability and continuing opportunity for local firms. As demonstrated through the Mentor-Protégé Program, the Walsh DBT will partner with successful DBE firms and offer opportunities on future projects in the Northern Kentucky-Southern Indiana region. These continuing opportunities will build capacity and provide for growth of local business partners.

4.2 WORKFORCE/EEO PLAN

The Walsh DBT's Workforce/EEO Plan is designed to grow a workforce, not just for this Project, but also for sustainable careers in the construction industry. A diverse and well-trained workforce is vital to the economic growth and longevity of the Louisville and Southern Indiana area. The Walsh DBT's challenge is finding an adequate labor pool to meet the demands of this Project, future transportation projects, and the construction industry in general. With the commitment of the Walsh DBT leadership and management, the Walsh DBT will exceed the 15 percent minority and 10 percent female workforce goals using the following Workforce/EEO Plan outline:

- A. Walsh DBT Workforce/EEO Management Team
- B. Proactive Workforce Outreach and Recruitment
- C. Education and Training Employees
- D. Retention
- E. Benchmark and Accountability
- F. Integration and Legacy

A. WALSH DBT WORKFORCE/EEO MANAGEMENT TEAM

The Walsh DBT Workforce/EEO Management Team consists of Maurice Sweeney, Doug Cunningham, and Marvin Jackson. Each has extensive experience in the diversity and workforce development field. Leading the Walsh DBT workforce team is Maurice Sweeney who

has over 30 years of diversity experience in leadership and strategic planning, employee training, relations, and managerial planning in both the public and private sector. Maurice's role within the Walsh DBT Workforce Team will include the following tasks:

- Identifying and aligning the supply of local minority and female workers.
- Establishing partnerships, using existing workforce and disadvantaged business supportive services.
- Identifying "assist agency" community-based and faith-based organizations for training programs.

The role of community-based and faith-based community organizations will include supplying and training skilled and unskilled labor personnel. The faith-based community organizations will further facilitate outreach and communication to neighborhoods and surrounding communities.

B. PROACTIVE WORKFORCE OUTREACH AND RECRUITMENT

The Walsh DBT is sensitive to the importance the Project has towards energizing the local economy and providing jobs either directly through employment on the Project or through subcontracting with local firms and suppliers. The Walsh DBT is fully aware of the work volume projected for the Louisville region through 2016 and has factored those anticipated workforce demands into planning for the Project.

The Walsh DBT brings a wealth of experience in developing and implementing similar programs throughout the country. For example:

- **The Dan Ryan Expressway Project, Chicago, IL**
Minority hiring goal of 19.6 percent and achieving 48 percent
- **Marquette Interchange, Milwaukee, WI**
Achieving 22 percent minority workforce

While past performance is one indicator used to forecast future results, the Walsh DBE Workforce/EEO

EXAMPLE MONTHLY DBE REPORT

This is an example of a Monthly DBE Report the Walsh DBT will provide to the KYTC.

SAMPLE DBE REPORT TRACKING FORM REPORT

Contract # _____ DBE Goal: \$ _____

Report for: _____ Month: _____ Year: _____

DBE Firm Name	Address	State	Estimated Percent of Estimated Work	Contract Value	DBE Goal	Actual	Change	Contract Value	DBE Goal	Actual	Change
DBE Company #1	1234 Main St	IN	10%	\$1,000,000	10%	10%	0%	\$1,000,000	10%	10%	0%
DBE Company #2	5678 Oak St	IN	5%	\$500,000	5%	5%	0%	\$500,000	5%	5%	0%
DBE Company #3	9012 Pine St	IN	3%	\$300,000	3%	3%	0%	\$300,000	3%	3%	0%
DBE Company #4	3456 Elm St	IN	2%	\$200,000	2%	2%	0%	\$200,000	2%	2%	0%
DBE Company #5	7890 Maple St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%
DBE Company #6	2345 Birch St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%
DBE Company #7	6789 Cedar St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%
DBE Company #8	1011 Spruce St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%
DBE Company #9	4321 Fir St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%
DBE Company #10	8543 Ash St	IN	1%	\$100,000	1%	1%	0%	\$100,000	1%	1%	0%

OUTREACH

DBE/EEO Project Plan Coordinator, Doug Cunningham, speaking to job applicants at the Jeffersonian Career Fair.



APPENDIX E

Virginia Department of Transportation Special Provisions Pertaining to DBE Program for Design-Build

VIRGINIA DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION FOR SECTION 107.15

FOR

DESIGN-BUILD PROJECTS

February 18, 2014

Section 107.15 of the Specifications is replaced by the following:

Section 107.15—Use of Disadvantaged Business Enterprises (DBEs) for Design-Build Projects

A. Disadvantaged Business Enterprise (DBE) Program Requirements

Any Design-Builder, subcontractor, supplier, DBE firm, or contract surety involved in the performance of work on a federal-aid contract shall comply with the terms and conditions of the United States Department of Transportation (U.S.DOT) DBE Program as the terms appear in Part 26 of the Code of Federal Regulations (49 CFR as amended), the U.S.DOT DBE Program regulations; and the Virginia Department of Transportation's (VDOT or the Department) Road and Bridge Specifications and DBE Program rules and regulations.

For the purposes of this provision, Offeror is defined as any individual, partnership, corporation, or joint venture that formally submits a Statement of Qualification or Proposal for the work contemplated thereunder; Design-Builder is defined as any individual, partnership, or joint venture that contracts with the Department to perform the work; and subcontractor is defined as any supplier, manufacturer, or subcontractor performing work or furnishing material, supplies or services to the contract. The Design-Builder shall physically include this same contract provision in every supply or work/service subcontract that it makes or executes with a subcontractor having work for which it intends to claim credit.

In accordance with 49 CFR Part 26 and VDOT's DBE Program requirements, the Design-Builder, for itself and for its subcontractors and suppliers, whether certified DBE firms or not, shall commit to complying fully with the auditing, record keeping, confidentiality, cooperation, and anti-intimidation or retaliation provisions contained in those federal and state DBE Program legal requirements. By submitting a Proposal on this contract, and by accepting and executing this contract, the Design-Builder agrees to assume these contractual obligations and to bind the Design-Builder's subcontractors contractually to the same at the Design-Builder's expense.

The Design-Builder and each subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Design-Builder shall carry out applicable requirements of 49 CFR Part 26 in the award, administration, and performance of this contract. Failure by the Design-Builder to carry out these requirements is a material breach of this contract, which will result in the termination of this contract or other such remedy, as VDOT deems appropriate.

All administrative remedies noted in this provision are automatic unless the Design-Builder exercises the right of appeal within the required time frame(s) specified herein. Appeal requirements, processes, and procedures shall be in accordance with guidelines stated herein and current at the time of the proceedings. Where applicable, the Department will notify the Design-Builder of any changes to the appeal requirements, processes, and procedures after receiving notification of the Design-Builder's desire to appeal.

All time frames referenced in this provision are expressed in business days unless otherwise indicated. Should the expiration of any deadline fall on a weekend or holiday, such deadline will automatically be extended to the next normal business day.

B. DBE Certification

The only DBE firms eligible to perform work on a federal-aid contract for DBE contract goal credit are firms certified as Disadvantaged Business Enterprises by the Virginia Department of Minority Business Enterprise (DMBE) or the Metropolitan Washington Airports Authority (MWAA) in accordance with federal and VDOT guidelines. DBE firms must be certified in the specific work listed for DBE contract goal credit. A directory listing of certified DBE firms can be obtained from the Virginia Department of Minority Business Enterprise' website: <http://www.dmbv.virginia.gov>.

C. Bank Services

The Design-Builder and each subcontractor are encouraged to use the services of banks owned and controlled by socially and economically disadvantaged individuals. Such banking services and the fees charged for services typically will not be eligible for DBE Program contract goal credit.

D. DBE Program-Related Certifications Made by Offerors/Design-Builders

By submitting a Proposal and by entering into any contract on the basis of that Proposal, the Offeror/Design-Builder certifies to each of the following DBE Program-related conditions and assurances:

- (1) That the Offeror/Design-Builder agrees to comply with the project construction and administration obligations of the U.S.DOT DBE Program, 49 CFR Part 26 as amended, and the Standard Specifications setting forth the Department's DBE Program requirements.
- (2) Design-Builder shall comply fully with the DBE Program requirements in the execution and performance of the contract. Design-Builder acknowledges that failure to comply may result in enjoinder from participation in future Department or state procurements and/or other legal sanctions.
- (3) To ensure that DBE firms have been given full and fair opportunity to participate in the performance of the contract. The Design-Builder certifies that all reasonable steps were, and will be, taken to ensure that DBE firms had, and will have, an opportunity to compete for and perform work on the contract. The Design-Builder further certifies that the Design-Builder shall not discriminate on the basis of race, color, age, national origin, or sex in the performance of the contract or in the award of any subcontract. Any agreement between a Design-Builder and a DBE whereby the DBE promises not to provide quotations for performance of work to other Design-Builders is prohibited.
- (4) Design-Builder shall make good faith efforts to obtain DBE participation in the proposed contract at or above the goal. The Offeror shall submit a written statement as a part of its Statement of Qualifications and/or Proposal indicating the Offeror's commitment to achieve the minimum requirement related to DBE goal indicated in Request for Qualification (RFQ) and/or Request for Proposal (RFP) for the entire value of the contract. The Offeror, by signing and submitting its Proposal, certifies the DBE participation information that will be submitted within the required time thereafter is true, correct, and complete, and that the information to be provided includes the names of all DBE firms that will participate in the contract, the specific item(s) that each listed DBE firm will perform, and the creditable dollar amounts of the participation of each listed DBE.
- (5) Offeror further certifies, by signing its Proposal, it has committed to meet the contract goal for DBE participation. Award of the contract will be conditioned upon meeting these and other listed requirements of 49 CFR Part 26.53 and the contract documents. By signing the Proposal, the Offeror certifies that good faith efforts will be made on work that it proposes to sublet; and that it will seek out and consider DBE firms as potential subcontractors and subconsultants. The Design-Builder shall, as a continuing obligation, contact DBE firms to solicit their interest, capability, and prices in sufficient time to allow them to respond effectively, and shall retain on file proper documentation to substantiate its good faith efforts.

- (6) Design-Builder shall not unilaterally terminate, substitute for, or replace any DBE firm that was designated in the executed contract in whole or in part with another DBE, any non-DBE firm, or with the Design-Builder's own forces or those of an affiliate of the Design-Builder without the prior written consent of Department as set out within the requirements of this Special Provision.
- (7) Design-Builder shall designate and make known to the Department a liaison officer who is assigned the responsibility of administering and promoting an active and inclusive DBE program as required by 49 CFR Part 26 for DBE firms. The designation and identity of this officer needs to be submitted only once by the Design-Builder.
- (8) Design-Builder shall comply fully with all contractual requirements and Legal Requirements of the U.S.DOT DBE Program, and shall cause each DBE firm participating in the contract to fully perform the designated work items with the DBE firm's own forces and equipment under the DBE firm's direct supervision, control, and management. Where a contract exists and where the Design-Builder, DBE firm, or any other firm retained by the Design-Builder has failed to comply with federal or Department DBE Program requirements, Department has the authority and discretion to determine the extent to which the DBE contract regulations have not been met, and will assess against the Design-Builder any remedies available at law or provided in the contract.
- (9) If a bond surety assumes the completion of work, if for any reason VDOT has terminated the Design-Builder, the surety shall be obligated to meet the same DBE contract terms and requirements as were required of the original Design-Builder in accordance with the requirements of this specification.

E. DBE Program Compliance Procedures

The following procedures shall apply to the contract for DBE Program compliance purposes:

- (1) **Prequalification of Subcontractors:** All prospective DBE subcontractors shall prequalify with the Department in accordance with the *Rules Governing Prequalification*.
- (2) **DBE Goal, Good Faith Efforts Specified:** Design-Builder shall evidence attainment of the DBE commitment equal to or greater than the required DBE goal through submission, to Department, of completed Form C-111, Minimum DBE Requirements; Form C-112, Certification of Binding Agreement; and Form C-48, Subcontractor/Supplier Solicitation and Utilization, as a part of the good faith efforts documentation set forth below:

Design Phase: Thirty (30) days after the Notice to Proceed for Design, the Design-Builder shall submit to Department for review and approval Forms C-111 and C-112 for each DBE firm to be utilized during the design phase to meet the DBE minimum requirement and Form C-48. Failure to submit the required documentation within the specified time frame shall be cause to deny credit for any work performed by a DBE firm and delay approval of the Design-Builder's monthly payment.

Construction Phase: No later than thirty (30) days prior to the DBE firm undertaking any work, Design-Builder shall submit to Department for review and approval Forms C-111, C-112, and C-48. Failure to submit the required documentation within the specified time frame shall result in disallowed credit of any work performed prior to approval of Forms C-111 and C-112 and delay approval of monthly payment.

The District Civil Rights Office (DCRO) will monitor good faith effort documentation quarterly to determine progress being made toward meeting the DBE minimum requirement established for the contract.

Forms C-48, C-49, C-111, and C-112 can be obtained from the VDOT website at: <http://vdotforms.vdot.virginia.gov>.

- (3) **Good Faith Efforts Described:** Department will determine if Design-Builder demonstrated adequate good faith efforts and if, given all relevant circumstances, those efforts were made actively and aggressively to meet the DBE requirements. Efforts to obtain DBE participation are not good faith efforts if they could not reasonably be expected to produce a level of DBE firm participation sufficient to meet the DBE Program requirements and DBE goal.

Good faith efforts may be determined through use of the following list of the types of actions the Design-Builder may make to obtain DBE participation. This is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts of similar intent may be relevant in appropriate cases:

- a. Soliciting through reasonable and available means, such as but not limited to attendance at pre-bid meetings, advertising, and written notices to DBE firms who have the capability to perform the work of the contract. Examples include advertising in at least one daily/weekly/monthly newspaper of general circulation, as applicable; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and Internet contacts with supporting documentation, including dates advertised. DBE firms shall have no less than five (5) business days to reasonably respond to the solicitation. Design-Builder shall determine with certainty if the DBE firms are interested by taking reasonable steps to follow up initial solicitations as evidenced by documenting such efforts as requested on Form C-49, DBE Good Faith Efforts Documentation.
- b. Selecting portions of the work to be performed by DBE firms in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out work items into economically feasible units to facilitate DBE firm participation, even when the Design-Builder might otherwise prefer to completely perform all portions of this work in its entirety or use its own forces.
- c. Providing interested DBE firms with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBE firms in responding to a solicitation.
- d. Negotiating for participation in good faith with interested DBE firms.
 - (1) Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBE firms that were considered; dates DBE firms were contacted; a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting; and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBE firms to perform the work.
 - (2) Design-Builder should, using good business judgment, consider a number of factors in negotiating with subcontractors/subconsultants, and should take a DBE firm's price, qualifications, and capabilities, as well as contract goals, into consideration. However, the fact that there may be some additional costs involved in finding and using DBE firms is not sufficient reason for a Design-Builder's failure to meet the DBE goal as long as such costs are reasonable and comparable to costs customarily appropriate to the type of work under consideration. Also, the ability or desire of a Design-Builder to perform the work with its own organization does not relieve the Design-Builder of the responsibility to make diligent good faith efforts. Design-Builders are not, however, required to accept higher quotes from DBE firms if the price difference can be shown by the Design-Builder to be excessive, unreasonable, or greater than would normally be expected by industry standards.
- e. A Design-Builder cannot reject a DBE firm as being unqualified without sound reasons based on a thorough investigation of the DBE firm's capabilities. The DBE firm's standing within its industry; membership in specific groups, organizations, or associations; political or social affiliations; and union vs. non-union employee status are not legitimate causes for the rejection or nonsolicitation of bids in the Design-Builder's efforts to meet the contract goal for DBE participation.
- f. Making efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance as required by Department or by Design-Builder.
- g. Making efforts to assist interested DBE firms in obtaining necessary equipment, supplies, materials, or related assistance or services subject to the restrictions contained in this Special Provision.
- h. Effectively using the services of appropriate personnel from VDOT and from DMBE; available minority/women community or minority organizations; contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and utilization of qualified DBEs.

F. Documentation and Administrative Reconsideration of Good Faith Efforts

Design-Builder must provide Form C-49, DBE Good Faith Efforts Documentation, of its efforts made to meet the DBE goal within the time frames specified in this provision. The means of transmittal and the risk for timely receipt of this information shall be the responsibility of the Design-Builder. Design-Builder shall attach additional pages to the certification, if necessary, in order to fully detail specific good faith efforts made to obtain the DBE firm's participation in the proposed work.

However, Design-Builder shall timely submit its completed and executed forms C-111, C-112, C-48, and C-49, as aforementioned. Failure to submit the required documentation within the specified time frames shall be cause to disallow DBE goal credit and delay approval of the Design-Builder's monthly payment.

During the Contract: If a DBE, through no fault of the Design-Builder, is unable or unwilling to fulfill its agreement with the Design-Builder, the Design-Builder shall immediately notify the Department and provide all relevant facts. If a Design-Builder relieves a DBE subcontractor of the responsibility to perform work under a subcontract, the Design-Builder is encouraged to take the appropriate steps to obtain another DBE firm to perform the remaining subcontracted work for the amount that would have been paid to the original DBE firm. In such instances, Design-Builder is expected to seek DBE participation toward meeting the goal during the performance of the contract.

If at any point during the execution and performance of the contract it becomes evident that the remaining dollar value of allowable DBE goal credit for performing the subcontracted work is insufficient to obtain the DBE contract goal, and the Design-Builder has not taken the preceding actions, the Design-Builder and any aforementioned affiliates may be subject to disallowance of DBE credit until such time as sufficient progress toward achievement of the DBE goal is achieved or evidenced.

Project Completion: If, at final completion, the Design-Builder fails to meet the DBE goal and fails to adequately document that it made good faith efforts to achieve sufficient DBE goal, then Design-Builder and any prime contractual affiliates, as in the case of a joint venture, may be enjoined from bidding, responding, or participating on Department projects for a period of ninety (90) days and be removed from Department's prequalification list.

Prior to such enjoinder or removal, Design-Builder may submit documentation to the State Construction Engineer or other designee of the Department to substantiate that failure was due solely to quantitative underrun(s), to elimination of items subcontracted to DBEs, or to circumstances beyond Design-Builder's control and that all feasible means had been used to achieve the DBE goal. The State Construction Engineer, or such other designee, upon verification of such documentation shall determine whether Design-Builder has met the requirements of the contract.

If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Design-Builder may request an appearance before the Department's Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements. The Administrative Reconsideration Panel will be made up of Department Division Administrators or their designees, none of whom took part in the initial determination that the Design-Builder failed to make the DBE goal or make adequate good faith efforts to do so. After reconsideration, the Department shall notify the Design-Builder in writing of its decision and explain the basis for finding that the Design-Builder did or did not meet the DBE goal or make adequate good faith efforts to do so. The decision of the Administrative Reconsideration Panel shall be administratively final. If the decision is made to enjoin the Design-Builder from bidding or participating on other Department work as described herein, the enjoinder period will begin upon Design-Builder's failure to request a hearing within the designated time frame or upon the Administrative Reconsideration Panel's decision to enjoin, as applicable.

G. DBE Participation for Contract Goal Credit

DBE participation on the contract will count toward meeting the DBE contract goal in accordance with the following criteria:

- (1) The applicable percentage of the total dollar value of the contract or subcontract awarded to the DBE firm will be counted toward meeting the DBE goal in accordance with the **DBE Program-Related Certifications Made by Offerors/Design-Builder's** section of this Special Provision for the value of the work, goods, or services that are actually performed or provided by the DBE firm itself or subcontracted by the DBE to other DBE firms.
- (2) When a DBE performs work as a participant in a joint venture with a non-DBE firm, the Design-Builder may count toward the DBE goal only that portion of the total dollar value of the subcontract equal to the distinctly defined

portion of the work that the DBE firm has performed with the DBE firm's own forces or in accordance with the provisions of this Section. The Department shall be contacted in advance regarding any joint venture involving both a DBE firm and a non-DBE firm to coordinate Department review and approval of the joint venture's organizational structure and proposed operation where the Design-Builder seeks to claim the goal credit.

- (3) When a DBE firm subcontracts part of the work to another firm, the value of that subcontracted work may be counted toward the DBE contract goal only if the DBE firm's subcontractor is a DBE firm. Work that a DBE firm subcontracts to a non-DBE firm, or to a firm that may be eligible to be a DBE firm but has not yet been certified as a DBE firm, will not count toward the DBE. The cost of supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or prime contractual affiliates, as in the case of a joint venture, will not count toward the DBE goal.
- (4) The Design-Builder may count expenditures to a DBE subcontractor toward the DBE goal only if the DBE performs a Commercially Useful Function (CUF) on that subcontract, as such term is defined in subparagraph H below.
- (5) A Design-Builder may not count the participation of a DBE subcontractor toward the DBE goal until the amount being counted has actually been paid to the DBE firm. Design-Builder may count sixty (60) percent of its expenditures actually paid for materials and supplies obtained from a DBE certified as a regular dealer, and one hundred (100) percent of such expenditures actually paid for materials and supplies obtained from a regular dealer of the goods or a manufacturer DBE firm.
 - a. For the purposes of this Special Provision, a "regular dealer" is defined as a firm or person that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment required and used 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 DBE firm or person shall be an established business that regularly engages, as its principal business and under its own name, in the purchase and sale or lease of the products or equipment in question. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions will not be considered regular dealers.
 - b. A DBE firm or 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 where it keeps such items in stock if the DBE firm both owns and operates distribution equipment for the products it sells and provides for the work, provided further that the DBE firm or person has been certified with an appropriate North American Industry Classification System (NAICS) code for supply of such bulk items. Any supplementation of a regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis to be eligible for credit to meet the DBE goal credit.
 - c. If a DBE regular dealer is used for DBE goal credit, no additional credit will be given for hauling or delivery to the project site goods or materials sold by that DBE regular dealer. Those delivery costs shall be deemed included in the price charged for the goods or materials by the DBE regular dealer, which shall be responsible for distribution of the goods or materials.
 - d. For the purposes of this Special Provision, a manufacturer will be defined as 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 the project specifications. A manufacturer shall include firms that produce finished goods or products from raw or unfinished material, or purchase and substantially alter goods and materials to make them suitable for construction use before reselling them.
 - e. A Design-Builder may count toward the DBE goal the following expenditures to DBE firms that are not regular dealers or manufacturers for DBE program purposes:
 - (1) 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 the federal-aid contract, if the fee is reasonable and not excessive or greater than would normally be expected by industry standards for the same or similar services.
 - (2) The entire amount of that portion of the contract that is performed by the DBE firm's own forces and equipment under the DBE firm's supervision. This includes the cost of supplies and materials ordered and paid for by the DBE firm for work, including supplies purchased or equipment leased by the DBE firm, except

Design-Builder supplies and equipment a DBE subcontractor purchases or leases from the Design-Builder or its affiliates.

- f. Design-Builder may count toward the DBE goal one hundred (100) percent of the fees paid to a DBE trucker or hauler for the delivery of material and supplies required on the project job site, but not for the cost of those materials or supplies themselves, provided that the trucking or hauling fee is determined by Department to be reasonable, as compared with fees customarily charged by non-DBE firms for similar services. Design-Builder shall not count costs for the removal or relocation of excess material from or on the job site when the DBE trucking company is the manufacturer of or a regular dealer in those materials and supplies. The DBE trucking firm shall also perform a CUF on the project and not operate merely as a pass-through for the purposes of gaining DBE goal credit. Prior to entering into a trucking subcontract, Design-Builder shall determine, or contact the Department Civil Rights Division or its district offices for assistance in determining, whether a DBE trucking firm will meet the criteria for performing a CUF on the project. See section on **Miscellaneous DBE Program Requirements; Factors Used to Determine If a DBE Trucking Firm Is Performing a CUF.**
- g. Design-Builder will receive DBE goal credit for the fees or commissions charged by and paid to a DBE broker who arranges or expedites sales, leases, or other work arrangements, provided that those fees are determined by Department to be reasonable and not excessive as compared with fees customarily charged by non-DBE firms for similar services. For the purposes of this Special Provision, a broker is defined as a person or firm that regularly engages in arranging for delivery of material, supplies, and equipment, or regularly arranges for the providing of project services as a course of routine business, but does not own or operate the delivery equipment necessary to transport materials, supplies or equipment to or from a job site.

H. Performing a Commercially Useful Function (CUF)

No credit toward the DBE goal will be allowed for payments or reimbursement of expenditures to a DBE firm if that DBE firm does not perform a CUF on that contract. A DBE firm performs a CUF when the DBE is solely responsible for execution of a distinct element of the work and the DBE firm actually performs, manages, and supervises such work with the DBE firm's own forces or in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. To perform a CUF, the DBE firm alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE firm's own forces and equipment, and paying for those materials and supplies. The amount the DBE firm is to be paid under the subcontract shall be commensurate with the work the DBE actually performs and the DBE goal credit claimed for the DBE firm's performance.

Monitoring CUF Performance: It shall be the Design-Builder's responsibility to confirm that all DBE firms selected for subcontract work on the contract for which the Design-Builder seeks to claim credit toward the DBE goal perform a CUF. Further, the Design-Builder is responsible for and shall confirm that each DBE firm fully performs its designated tasks in accordance with the provisions of the **DBE Participation for Contract Goal Credit** section of this Special Provision. For the purposes of this Special Provision, the DBE firm's equipment will mean either equipment directly owned by the DBE as evidenced by title, bill of sale or other such documentation, or leased by the DBE firm and over which the DBE has control, as evidenced by the leasing agreement from a firm not owned in whole or part by the Design-Builder or an affiliate of the Design-Builder. Department will monitor Design-Builder's DBE involvement during the performance of the contract. However, Department is under no obligation to warn the Design-Builder that a DBE firm's participation will not count toward the goal.

DBE Firms Must Perform a Useful and Necessary Role in Contract Completion: A DBE firm does not perform a CUF if the DBE firm's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE firm participation.

DBE Firms Must Perform the Contract Work with Their Own Workforces: If a DBE firm does not perform and exercise responsibility for at least thirty (30) percent of the total cost of the DBE firm's contract with the DBE firm's own work force, or the DBE firm subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involve, Department will presume that the DBE firm is not performing a CUF and such participation will not be counted toward the DBE goal.

Department Makes Final Determination on Whether a CUF Is Performed: Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract. To determine whether a DBE is performing or has performed a CUF, Department will evaluate the amount of work subcontracted by that DBE firm or performed by other firms and the extent of the involvement of other firms' forces and equipment. Any DBE work performed by the Design-Builder or by employees or equipment of the Design-Builder shall be subject to disallowance under the DBE Program, unless the independent validity and need for such an arrangement and work is demonstrated. When a DBE firm is presumed not to be performing a commercially useful function, the DBE may present evidence to rebut the Department's finding. Department has the final authority to determine, in its sole discretion, whether a DBE firm has performed a CUF on the contract.

I. Verification of DBE Participation and Imposed Damages

Within fourteen (14) days after subcontract execution between Design-Builder and DBE subcontractors (or subcontract execution between DBE subcontractors and DBE subcontractors), Design-Builder shall submit to the DCRO a copy of the fully executed subcontract agreement for each DBE firm used to claim credit in accordance with the requirements stated on Form C-111. The subcontract shall be executed by both parties stating the work to be performed, the details or specifics concerning such work, and the price which will be paid to the DBE subcontractor. Because of the commercial damage that the Design-Builder and its DBE subcontractor could suffer if their subcontract pricing, terms, and conditions were known to competitors, the Department staff will treat subcontract agreements as proprietary Design-Builder trade secrets with regard to Freedom of Information Act requests. In lieu of subcontracts, purchase orders may be submitted for haulers, suppliers, and manufacturers. These too, will be treated confidentially and protected. Such purchase orders must contain, at a minimum, the following information: authorized signatures of both parties; description of the scope of work to include contract item numbers, quantities, and prices; and required federal contract provisions.

The Design-Builder shall also furnish, and shall require each subcontractor to furnish, information relative to all DBE involvement on the project for each quarter during the life of the contract in which participation occurs and verification is available. The information shall be indicated on Form C-63, DBE and SWAM Payment Compliance Report. The Department reserves the right to request proof of payment via copies of cancelled checks with appropriate identifying notations. Failure to provide Form C-63 to the DCRO within five (5) business days after the reporting period may result in delay of approval of the Design-Builder's monthly payment. The names and certification numbers of DBE firms provided by the Design-Builder on the various forms indicated in this Special Provision shall be exactly as shown on DMBE's latest list of certified DBEs. Signatures on all forms indicated herein shall be those of authorized representatives of the Design-Builder as shown on the Prequalification Application, Form C-32 or the Prequalification/Certification Renewal Application, Form C-32A, or authorized by letter from the Design-Builder. If DBE firms are used which have not been previously documented with the Design-Builder's minimum DBE requirements documentation and for which the Design-Builder now desires to claim credit toward the contract goal, the Design-Builder shall be responsible for submitting necessary documentation in accordance with the procedures stipulated in this Special Provision to cover such work prior to the DBE firm beginning work. Form C-63 can be obtained from the VDOT website at <http://vdotforms.vdot.virginia.gov>.

Design-Builder shall submit to the Department's Project Manager (with a copy to the DCRO) a narrative with each project schedule submission, as required in the Special Provision for Design-Build Project Schedule (Part 3, Exhibit 11.1). The project schedule narrative shall include a log of applicable DBE participation activities in the Design-Builder's project schedule for which the Design-Builder intends to claim credit for attaining the DBE goal required in the contract. The log shall include the proposed start/finish dates, durations, and dollar values of the DBE participation activities.

Narratives or other agreeable format of schedule information requirements and subsequent progress determination shall be based on the commitment information shown on the latest Form C-111 as compared with the appropriate Form C-63.

Prior to beginning any major component of the work to be performed by a DBE firm not previously submitted, Design-Builder shall furnish a revised Form C-111 showing the name(s) and certification number(s) of any such DBEs for which Design-Builder seeks DBE goal credit. Design-Builder shall obtain the prior approval of the Department for any assistance it may provide to the DBE firm beyond its existing resources in executing its commitment to perform the work in accordance with the requirements listed in the **Good Faith Efforts Described** section of this Special Provision. If Design-Builder is aware of any assistance beyond a DBE firm's existing resources that Design-Builder, or another subcontractor, may be contemplating or may deem necessary and that have not been previously approved, Design-Builder shall submit a new or revised narrative statement for Department's approval prior to assistance being rendered.

If the Design-Builder fails to correctly complete any of the required documentation requested by this Special Provision within the specified time frames, the Department will withhold payment until such time as the required submissions are received by Department. Where such failures to provide required submittals or documentation are repeated, Department will move to enjoin the Design-Builder and any prime contractual affiliates, as in the case of a joint venture, from bidding on, responding to, or participating in Department projects until such submissions are received.

J. Documentation Required for Semifinal Payment

Design-Builder must submit Form C-63 to the DCRO sixty (60) days prior to date of final completion, set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the accepted creditable work. The form shall be certified under penalty of perjury, or other applicable legal requirements, to be accurate and complete. Department will use this certification and other information available to determine applicable DBE credit allowed to date by Department and the extent to which the DBE firms were fully paid for that work. The Design-Builder acknowledges by the act of filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract. A letter of certification, signed by both the Design-Builder and appropriate DBE firms, will accompany the form, indicating the amount, including any retainage, if present, that remains to be paid to the DBE firm(s).

K. Documentation Required for Final Payment

In anticipation of final payment, Design-Builder shall submit a final Form C-63 marked "Final" to the DCRO within thirty (30) days of the anticipated date of final completion, as set forth on the Baseline Schedule (as updated from time to time in accordance with the contract). The form must include each DBE firm used on the contract and the work performed by each DBE firm. The form shall include the actual dollar amount paid to each DBE firm for the creditable work. Department will use this form and other information available to determine if Design-Builder and DBE firms have satisfied the DBE goal and the extent to which credit was allowed. Design-Builder acknowledges by the act of signing and filing the form that the information is supplied to obtain payment regarding the contract as a federal participation contract.

L. Prompt Payment Requirements

Design-Builder shall make prompt and full payment to the subcontractor(s) (including DBE subcontractors) of any retainage held by Design-Builder after the subcontractor's work is satisfactorily completed.

For purposes of this Special Provision, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted as required by the contract documents by Department. If Department has made partial acceptance of a portion of the contract, then Department will consider the work of any subcontractor covered by that partial acceptance to be satisfactorily completed. Payment will be made in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

Upon Department's payment of the subcontractor's portion of the work as shown on the application for payment and the receipt of payment by Design-Builder for such work, the Design-Builder shall make compensation in full to the subcontractor for that portion of the work satisfactorily completed and accepted by the Department. For the purposes of this Special Provision, payment of the subcontractor's portion of the work shall mean the Design-Builder has issued payment in full, less agreed upon retainage, if any, to the subcontractor for that portion of the subcontractor's work that Department paid to Design-Builder pursuant to the applicable application for payment.

Design-Builder shall make payment of the subcontractor's portion of the work within seven (7) days of the receipt of payment from Department in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

If Design-Builder fails to make payment for the subcontractor's portion of the work within the time frame specified herein, the subcontractor shall notify the Department and the Design-Builder's bonding company in writing. Upon written notice from the subcontractor, the Design-Builder's bonding company and Department will investigate the cause for nonpayment. Barring mitigating circumstances that would make the subcontractor ineligible for payment, the Design-Builder's bonding company shall be responsible for insuring payment to the subcontractor in accordance with the requirements of Section 107.01, Section 109.08, and Section 109.09 of the Division I Amendments to the Standard Specifications (Part 5).

By accepting and executing this contract, the Design-Builder agrees to assume these obligations and to bind the Design-Builder's subcontractors contractually to these obligations.

Nothing contained herein shall preclude Design-Builder from withholding payment to the subcontractor in accordance with the terms of the subcontract in order to protect the Design-Builder from loss or cost of damage due to a breach of the subcontract by the subcontractor.

M. Miscellaneous DBE Program Requirements

Loss of DBE Eligibility: When a DBE firm has been removed from eligibility as a certified DBE firm, the following actions will be taken:

- (1) When a Design-Builder has made a commitment to use a DBE firm that is not currently certified, thereby making the Design-Builder ineligible to receive DBE goal credit for work performed, the ineligible DBE firm's work does not count toward the DBE goal. Design-Builder shall meet the DBE goal with a DBE firm that is eligible to receive DBE credit for work performed or must demonstrate to the DCRO that it has made good faith efforts to do so.
- (2) When a Design-Builder has executed a subcontract with a DBE firm prior to official notification of the DBE firm's loss of eligibility, Design-Builder may continue to use the firm on the contract and shall continue to receive DBE credit toward DBE goal for the subcontractor's work.
- (3) When Department has executed a prime contract with a DBE firm that is certified at the time of contract execution but that is later ruled ineligible, the portion of the ineligible firm's performance on the contract before VDOT has issued the notice of its ineligibility shall count toward the contract goal.

Termination of DBE: If a DBE subcontractor is terminated or fails, refuses, or is unable to complete the work on the contract for any reason, Design-Builder must promptly request approval to substitute or replace that DBE firm in accordance with this section of this Special Provision.

Design-Builder shall notify DCRO in writing before terminating and/or replacing the DBE firm that is being used or represented to fulfill DBE-related contract obligations during the term of the contract. Written consent from the DCRO for terminating the performance of any DBE firm shall be granted only when the Design-Builder can demonstrate that the DBE firm is unable, unwilling, or ineligible to perform its obligations for which the Design-Builder sought credit toward the DBE goal. Such written consent by the Department to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE with another DBE. Consent to terminate a DBE firm shall not be based on the Design-Builder's ability to negotiate a more advantageous contract with another subcontractor, whether that subcontractor is or is not a DBE firm.

- (1) All Design-Builder requests to terminate, substitute, or replace a DBE firm shall be in writing, and shall include the following information:
 - a. The date the Design-Builder determined the DBE to be unwilling, unable, or ineligible to perform.
 - b. The projected date that the Design-Builder shall require a substitution or replacement DBE to commence work if consent is granted to the request.
 - c. A brief statement of facts describing and citing specific actions or inaction by the DBE firm giving rise to Design-Builder's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
 - d. A brief statement of the DBE firm's capacity and ability to perform the work as determined by the Design-Builder.
 - e. A brief statement of facts regarding actions taken by the Design-Builder, that Design-Builder believes constitute good faith efforts toward enabling the DBE firm to perform.
 - f. The current percentage of work completed by the DBE firm.
 - g. The total dollar amount currently paid for work performed by the DBE firm.

- h. The total dollar amount remaining to be paid to the DBE firm for work completed for which the DBE firm has not received payment and with which the Design-Builder has no dispute.
- i. The total dollar amount remaining to be paid to the DBE firm for work completed for which the DBE firm has not received payment and over which the Design-Builder and the DBE firm have a dispute.

(2) Design-Builder's Written Notice to DBE of Pending Request to Terminate and Substitute with Another DBE.

Design-Builder shall send a copy of the "request to terminate and substitute" letter to the affected DBE firm and make best efforts to ensure its receipt by the DBE firm, in conjunction with submitting the request to the DCRO. The DBE firm may submit a response letter to the DCRO and Department within two (2) business days of receiving the notice to terminate from the Design-Builder. If the DBE firm submits a response letter, then Design-Builder shall, as part of its subcontract, obligate the DBE firm to explain its position concerning performance on the committed work. The Department will consider both the Design-Builder's request and the DBE firm's response and explanation before approving the Design-Builder's termination and substitution request.

If, after making its best efforts to deliver a copy of the "request to terminate and substitute" letter, the Design-Builder is unsuccessful in notifying the affected DBE firm, the Department will verify that the DBE firm is unable or unwilling to continue performing its subcontract let with respect to the contract. Department will timely approve the Design-Builder's request for a substitution.

(3) Proposed Substitution of Another Certified DBE

Upon termination of a DBE firm, Design-Builder shall use reasonable good faith efforts to replace the terminated DBE firm. The termination of such DBE firm shall not relieve Design-Builder of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal.

When a DBE substitution is necessary, the Design-Builder shall submit an amended Form C-111 to the DCRO for approval with the name of another DBE firm, the proposed work to be performed by that DBE firm, and the dollar amount of the work to replace the unfulfilled portion of the work of the original DBE firm.

Should Design-Builder be unable to commit the remaining required dollar value to the substitute DBE firm, the Design-Builder shall provide written evidence of good faith efforts made to obtain the substitute value requirement. Department will review the quality, thoroughness, and intensity of those efforts. Efforts that are viewed by Department as merely superficial or pro forma will not be considered good faith efforts to meet the DBE goal. Design-Builder must document the steps taken that demonstrated its good faith efforts to obtain participation as set forth in the Good Faith Efforts Described section of this Special Provision.

Factors Used to Determine Whether a DBE Trucking Firm Is Performing a CUF

The following factors will be used to determine whether a DBE trucking company is performing a CUF:

- (1) To perform a CUF, the DBE trucking firm shall be completely responsible for the management and supervision of the entire trucking operation for which the DBE trucking firm is responsible by subcontract under the contract. There shall not be a contrived arrangement, including but not limited to any arrangement that would not customarily and legally exist under customary construction project subcontracting practices for the purpose of meeting the DBE goal.
- (2) The DBE firm must own and operate at least one fully licensed, insured, and operational truck used in the performance of the contract work. This does not include a supervisor's pickup truck or a similar vehicle that is not suitable for and customarily used in hauling the subject materials or supplies.
- (3) Design-Builder is eligible to receive full credit toward the DBE goal for the total reasonable amount the DBE firm is paid for the transportation services provided on the subcontract under the contract using acceptable trucks the DBE firm owns, insures, and operates using drivers that the DBE employs and manages.

- (4) The DBE trucking firm may lease trucks from another DBE firm, including from an owner-operator who is a DBE firm. Design-Builder is eligible to receive credit for the total fair market value actually paid for transportation services the lessee DBE firm provides to the DBE firm that leases trucks from such lessee DBE firm on the contract.
- (5) The DBE firm may also lease trucks from a non-DBE firm, including an owner-operator. Design-Builder may be eligible to receive DBE goal credit for the services of a DBE firm that leases trucks from a non-DBE firm up to the total value of the transportation services provided by non-DBE lessees, *not to exceed the value of transportation services provided by DBE-owned trucks on the contract*. For additional participation by non-DBE lessees, the DBE will receive credit only for the fee or commission it receives as a result of the lease arrangement.

Truck Counting

Design-Builders may count for credit against the DBE goal the dollar volume attributable to no more than twice the number of trucks owned by a DBE firm or leased from another DBE firm.

Firm X

Truck 1 Owned by DBE

Truck 2 Owned by DBE

Firm Y

Truck 3 Leased from DBE

Truck 4 Leased from DBE

Firm Z

Truck 5 Leased from Non-DBE

Truck 6 Leased from Non-DBE

Truck 7 Leased from Non-DBE

Truck 8 Leased from Non-DBE

Truck 9 Leased from Non-DBE*

Truck 10 Leased from Non-DBE*

Credit = 8 Trucks

In this case, DBE credit would be awarded for the total transportation services provided by DBE firm X and DBE Firm Y, and may also be awarded for the total value of transportation services by four (4) of the six (6) trucks provided by non-DBE Firm Z (not to exceed the value of transportation services provided by DBE-owned trucks).

In all, full DBE credit would be allowed for the participation of eight (8) trucks (twice the number of DBE trucks owned and leased) and the dollar value attributable to the Value of Transportation Services provided by the 8 trucks.

* With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that DBE Firm X receives as a result of the lease with non-DBE Firm Z.

- (6) For purposes of this section, the lease must indicate that the DBE firm leasing the truck has exclusive use of and control over the truck. This will not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, provided the lease gives the DBE absolute priority for and control over the use of the leased truck. Leased trucks must display the name and identification number of the DBE firm that has leased the truck at all times during the life of the lease.

N. Suspect Evidence of Criminal Behavior

Failure of Design-Builder or any subcontractor to comply with the Standard Specifications, this Special Provision, or any other contract document wherein there appears to be evidence of criminal conduct shall be referred to the Attorney General for the Commonwealth of Virginia and/or the FHWA Inspector General for criminal investigation and, if warranted, prosecution.

Suspected DBE Fraud

In appropriate cases, Department will bring to the attention of the United States Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that U.S.DOT can take the proper steps: referral to the Department of Justice for criminal prosecution, referral to the U.S.DOT Inspector General, and/or action under suspension and debarment or “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

APPENDIX F

Minnesota DOT Disadvantaged Business Enterprise (DBE) Special Provisions for Design-Build Projects

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FORMS

Letter of Intent to Subcontract – Form LSI

DBE Description of Work – Exhibit A Form

Certificate of Good Faith Efforts Consolidated Form – GFE Form

Design-Build Bidders List

Contractor Payment Form

DBE Total Payment Affidavit

NOTE: In this document, the Design-Builder is referred to as the Proposer prior to award and the Contractor post award.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SPECIAL PROVISIONS FOR DESIGN-BUILD PROJECTS

PURPOSE

These provisions (1) provide an explanation of the federal law and information regarding compliance with the DBE requirements applicable to this contract, (2) explain the process MnDOT will follow to evaluate Proposers' efforts to obtain DBE participation, (3) provide the standards MnDOT will use to measure compliance with these requirements, and (4) identify sanctions.

POLICY STATEMENT

It is the policy of the Minnesota Department of Transportation (MnDOT) that Disadvantaged Business Enterprises (DBE), as defined in Title 49 CFR Part 26, and other small businesses shall have the maximum feasible opportunity to participate in contracts financed in whole or in part with public funds provided by the U.S. Department of Transportation (U.S.DOT). Consistent with this policy, MnDOT will not allow any person or business to be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of any U.S.DOT-assisted contract because of sex, race, religion, or national origin. MnDOT has established a DBE program in accordance with regulations concerning 49 CFR Part 26.

MnDOT has received federal financial assistance from U.S.DOT for this contract, therefore the DBE requirements of 49 CFR §26 apply to this contract. As a condition of receiving this assistance, MnDOT has provided assurance that it will comply with 49 CFR §26. This regulation requires that Proposers take necessary and reasonable steps to ensure that DBEs have the maximum opportunity to compete for and perform this contract. These special provisions provide detailed information about these requirements and identify the responsibility the Proposer has to demonstrate compliance with these requirements. Failure to comply with these terms will be treated as a violation of this contract.

CONTRACT ASSURANCE

The Proposer, its subcontractors and suppliers shall not discriminate on the basis of sex, color, race, or national origin in the performance of this contract. The Proposer agrees to act in accordance with applicable requirements of 49 CFR §26 in the execution and award of this contract. Failure of the Proposer to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or other such remedy as MnDOT deems appropriate.

DEFINITIONS

- A. **Disadvantaged Business Enterprise (DBE) Firm** – A designation granted to a firm that is certified to participate in the DBE program. For this contract, a firm that is certified as a DBE in either Minnesota or Wisconsin is eligible to earn DBE credit for its performance on the contract.
- B. **Minnesota Unified Certification Program (Mn/UCP)** – The Mn/UCP certifies firms as DBEs in the State of Minnesota. Access the online directory of certified DBE firms at <http://www.mnucp.org>.
- C. **Wisconsin Department of Transportation Unified Certification Program (WisDOT UCP)** – The WisDOT UCP certifies firms as DBEs in the State of Wisconsin. Access the online directory of certified DBE firms at <http://app.mylcm.com/wisdot/Reports/WisDotUCPDirectory.aspx>.
- D. **MnDOT Office of Civil Rights (OCR)** – The MnDOT office responsible for administering the DBE program on this project. More information can be found at www.dot.state.mn.us/civilrights or 651-366-3073.
- E. **Subcontractor** – Includes subcontractors, consultants and subconsultants, vendors, and service providers that perform or provide a service within the scope of this contract.

DBE GOAL

The DBE goal established for this contract is 16.7%.

SOLICITING DBES

All Proposers should make every reasonable effort to subcontract work and purchase materials from DBEs through good faith negotiations and solicitations in advance of the dates specified for submitting DBE information.

To fulfill the DBE goal, the firms utilized as DBE subcontractors or suppliers must be certified as DBEs by either the Mn/UCP (Minnesota) or the WisDOT UCP (Wisconsin). The firms must be DBE certified prior to the submission due date of this proposal. If the DBE is selected after the submission due date, it must be certified prior to OCR approval of the DBE subcontract for participation toward the contract goal. The Mn/UCP and WisDOT UCP maintain online directories of DBE certified firms. See the Definitions section of this document for more information about the DBE directories.

MnDOT, the Mn/UCP, and the WisDOT UCP do not make any representations as to any DBE's technical or financial ability to perform the work. Prime Contractors are solely responsible for performing due diligence in hiring DBE subcontractors. A DBE's failure to perform the work will not be considered justification for a compensation increase.

METHODS TO ACHIEVE THE DBE GOAL

The Proposer may establish individual DBE goals on subcontracts and agreements as appropriate in amounts consistent with 49 CFR Part 26.51(e) to ensure that the overall contract goal is met. MnDOT will monitor the Proposer's activities to determine if they are conducted in a manner consistent with the requirements of 49 CFR Part 26. MnDOT's Office of Civil Rights (OCR) will evaluate all subcontracts and agreements to determine whether the Proposer met the goal or made adequate good faith efforts. All subcontracts and agreements must be reviewed for DBE program compliance and approved prior to the award/selection of each subcontractor or supplier.

The Proposer must establish either (1) that it has met the DBE participation goal, or (2) that it has made adequate good faith efforts to meet the DBE goal.

The DBE goal may be attained by:

- (1) Subcontracting with a DBE firm that is certified in either Minnesota or Wisconsin. The Proposer must submit a signed agreement or a signed affidavit committing it to enter into such a subcontract.
- (2) Leasing equipment from a DBE firm that is certified in either Minnesota or Wisconsin.
- (3) Entering into a joint venture with a DBE firm that is certified in either Minnesota or Wisconsin. The joint venture must be approved in writing by the MnDOT (OCR) prior to the selection of a subcontractor, consultant, subconsultant, supplier or regular dealer, or other service provider. It is the Proposer's responsibility to verify that OCR has preapproved the joint venture.
- (4) Purchasing materials and supplies from a DBE firm certified in either Minnesota or Wisconsin to perform as a supplier or regular dealer (60% of the regular dealer's contracted amount will be credited toward the DBE goal).
- (5) Other services preapproved by the OCR.

The Proposer must make adequate good faith efforts to include DBE firms in the Design-Build team. Furthermore, the Proposer shall make every reasonable effort to obtain DBE participation through negotiations and solicitations in advance of the date specified for the opening of bids.

The Proposer shall indicate at the time of proposal its DBE commitment (which may be different from the goal indicated in this proposal). The DBE commitment is the amount of work the Proposer commits to have DBE firms perform on the con-

tract. A Proposer who fails to indicate a DBE commitment will be evaluated as if the Proposer committed to meet the DBE goal indicated in this RFP.

SUBMITTAL OF INFORMATION

The Proposer must identify the efforts it made to meet the DBE goal. The Proposer must submit the information described in this section as instructed. All Proposers are required to thoroughly document these solicitation efforts. The Proposer must justify any bids, quotes, or proposals it rejects from properly certified, qualified DBE firms.

THE FOLLOWING INFORMATION MUST BE HAND DELIVERED TO PETER DAVICH AT MnDOT CENTRAL OFFICE AT THE DAY AND TIME OF THE PRICE PROPOSAL DUE DATE. The information must be submitted on a compact disc (CD) as PDF files. FAILURE TO DELIVER ALL REQUIRED INFORMATION AT THE TIME OF THE PRICE PROPOSAL DUE DATE WILL RESULT IN REJECTION OF YOUR BID ON THE BASIS THAT YOU ARE NOT A RESPONSIVE BIDDER. PARTIAL SUBMISSIONS WILL NOT BE CONSIDERED.

The Proposer must establish that it (1) obtained sufficient DBE participation to meet the goal, or (2) made adequate good faith efforts to meet the DBE goal. The Proposer must provide information showing the amount of DBE participation it intends to utilize on this contract. The Proposer must document the efforts it made to obtain DBE participation.

The Proposer must submit the following documents to the MnDOT Office of Civil Rights:

- (1) Certificate of Good Faith Efforts Consolidated Form (GFE Form)
 - (2) Good Faith Efforts Affidavit
 - (3) Bidders List
 - (4) Letter of Intent to Subcontract (must complete one for each DBE)
 - (5) DBE Description of Work and Field Monitoring Report (Exhibit A Form)
 - (6) DBE Goal Certification Form
 - (7) Supporting Documentation to Verify Good Faith Efforts - including, but not limited to a copy of the signed agreements with each DBE to be utilized by the Proposer, subcontractor or supplier.
1. **Certificate of Good Faith Efforts Consolidated Form (GFE Form):** Please note that “Part D - SOLICITATION OF SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS” is only required if the Proposer does not have sufficient DBE participation to meet the DBE contract goal at the time this information is due. The Proposer must show that it made adequate good faith efforts to meet the goal. Instructions are provided in each section.
 2. **Good Faith Efforts Affidavit:** The Proposer must submit a completed Good Faith Efforts Affidavit. The affidavit must be signed by an individual duly authorized by the Proposer to legally bind the Proposer in this Special Provision. All Proposers must complete this form.
 3. **Bidders List:** This form is used by the proposer to list each firm (both DBE and non-DBE) that provides a bid or proposal. This includes bidders who are and are not selected, a description of the work, and the dollar amount of the proposal or bid. All Proposers must complete this form.

The Bidders List must be maintained in accordance with 49 CFR §26.11(C) and must identify all firms quoting or bidding on subcontracts, consultant, sub-consultant, supplier, or service provider. The Proposer may utilize MnDOT’s Bidders List Form, included in this document or prepare a suitable alternative format that provides the same information:

- a. The firm’s name
- b. The firm’s address
- c. The firm’s status as a DBE or non-DBE

- d. The type of work the firm will perform
 - e. The amount of the firm's bid or quote
4. **Letter of Intent to Subcontract:** The Proposer and its subcontractors and suppliers must submit a Letter of Intent to Subcontract for each subcontractor or supplier it intends to contract work within the scope of this project. This form must include a detailed description of the work; whether the firm is a Joint Venture or Mentor-Protégé, and whether the firm is a Mn/UCP- or WisDOT-UCP certified DBE. Submission of a signed Letter of Intent to Subcontract is not a guarantee that there will be a subcontract.
 5. **DBE Description of Work and Field Monitoring Report (Exhibit A Form) –** The Proposer must submit a **DBE Description of Work and Field Monitoring Report (Exhibit A Form)** for each DBE firm whose participation on the project will count toward the DBE goal. This form must *be accompanied by the Letter of Intent to Subcontract or other proof of commitment to use the DBE firm*, such as copies of signed agreements or affidavits to that effect. These commitments will be used to determine the “commitment rate,” which is the percentage of DBE participation the Proposer has obtained at the time of submission. OCR will determine whether the Proposer meets the DBE goal based on this information.

The Proposer commits to using the proposed DBE firms for not less than the percentage of the DBE participation shown on the DBE Description of Work and Field Monitoring Report (Exhibit A). A Proposer will be deemed nonresponsive if it fails to include in its submission a completed DBE Description of Work and Field Monitoring Report (Exhibit A Form), as required, for each DBE firm.
 6. **Additional Information:** If the Proposer fails to meet the established DBE goal, it must submit any additional information that it believes is relevant to showing that it made adequate good faith efforts to meet the goal as required by the DBE program.

IF THE DBE GOAL IS NOT MET, EVALUATE GOOD FAITH EFFORTS

A Proposer that does not commit to meeting the DBE goal is not disqualified if the Proposer demonstrates that it made adequate good faith efforts (GFEs) to meet the DBE goal. A Proposer that does not commit to meet the DBE goal and fails to show that adequate GFEs were made is a nonresponsive bidder, and MnDOT will reject its bid. See 49 CFR §26.53(a)(2).

EVALUATION OF GOOD FAITH EFFORTS

The Proposer must show that it took all necessary and reasonable steps to achieve the DBE goal which—by their scope, intensity, and appropriateness to the objective—could reasonably be expected to obtain sufficient DBE participation, even if these efforts were not fully successful. Mere pro forma efforts are not sufficient to meet the DBE contract requirements. In evaluating the Proposer's adequate good faith efforts, MnDOT will consider the following list of actions. This is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. Compliance with the adequate good faith efforts requirement will be determined on a case-by-case basis.

- A. Soliciting through all reasonable and available means (e.g., attendance at prebid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Proposer must determine with certainty whether the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. 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 Proposer might otherwise prefer to perform these work items with its own forces.
- C. 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.

- D. (1) Negotiating in good faith with interested DBEs. It is the Proposer's responsibility to make a portion of the work available to DBE subcontractors, consultants, subconsultants, and regular dealers, and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers so as to facilitate DBE participation. Evidence of such negotiation includes the names, 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 contracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- D. (2) A Proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, 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 ALB of the responsibility to make good faith efforts. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry; membership in specific groups, organizations, or associations; and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or nonsolicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

COUNTING DBE PARTICIPATION & COMMERCIALLY USEFUL FUNCTION

In accordance with 49 CFR § 26.55, MnDOT will determine the percentage of DBE participation that will be counted toward the overall DBE goal as follows:

- (A) When a DBE participates in a contract, MnDOT will only count the value of the work actually performed by the DBE toward DBE goals.
 - (1) The entire amount of the portion of a construction contract (or other contract not covered by paragraph 49 CFR § 26.55(a)(2)) 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 or its affiliate).
 - (2) 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 U.S.DOT-assisted contract, counts toward DBE goals, provided that MnDOT determines 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 subcontract 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 will not count toward DBE goals.
- (B) When a DBE performs as a participant in a joint venture, MnDOT will 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.

- (C) MnDOT will count expenditures of a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
- (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, MnDOT will 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 DBE credit claimed for its performance of the work, and other relevant factors.
 - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which the funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, MnDOT must examine similar transactions, particularly those in which DBEs do not participate.
 - (3) If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, MnDOT must presume that it is not performing a commercially useful function.
 - (4) When a DBE is presumed not to be performing a commercially useful function as provided in the preceding paragraph, the DBE may present evidence to rebut this presumption. MnDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - (5) MnDOT decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to U.S.DOT.
- (D) MnDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
 - (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the Director of the Office of Civil Rights.
 - (6) For purposes of this section, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for the use of the leased truck. Leased trucks must display the name and identification number of the DBE.

- (E) MnDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
- (1) MnDOT will count 100% of the cost of the materials or supplies toward DBE goals if the materials or supplies are obtained from a DBE manufacturer.
 - (2) For purposes of this section (e), a manufacturer is 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 in the specifications.
 - (3) If the materials or supplies are purchased from a DBE regular dealer, MnDOT will count 60% of the cost of the materials or supplies toward DBE goals.
 - (4) For purposes of this section (e), a regular dealer is 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 to or leased to the public in the usual course of business.
 - 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 as provided in 49 CFR § 26.55(e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a 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 section (e).
 - (5) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, MnDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided MnDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. MnDOT, however, will not count any portion of the cost of the materials or supplies themselves toward DBE goals.
- (F) If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR § 26 Subpart D at the time of execution of the contract, MnDOT will not count the firm's participation toward any DBE goals.
- (G) The dollar value of the work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
- (H) MnDOT will not count the participation of a DBE subcontractor toward the contractor's final compliance with its DBE obligations on a contract until the amount being counted has been actually paid to the DBE.

Following this review, the OCR staff will make a recommendation to the Director of OCR, or designee, as to whether the Proposer has met the DBE goal or made adequate good faith efforts. The Director of OCR will determine whether the Proposer has met the DBE goal or made adequate good faith efforts to meet the goal for this contract in accordance with 49 CFR § 26.53 and 49 CFR § 26 Appendix A. The Director's written determination will be mailed to the Proposer informing it of this decision approximately 10–12 business days after receipt of the information. If the Director determines that the Proposer failed to meet the DBE goal or that it failed to make adequate good faith efforts to do so, the determination notice will be sent by certified U.S. mail.

A Proposer that fails to meet the DBE goal or fails to make adequate good faith efforts to meet the goal is a nonresponsive bidder and will not be awarded the contract.

CONTINUING GOOD FAITH EFFORTS – ADDING DBES AFTER AWARD

After award and for the duration of the contract, the Contractor has a continuing obligation to make adequate good faith efforts to meet the DBE goal. Adequate good faith efforts are explained in the “Evaluation of Good Faith Efforts” section of this document.

To add DBE participation after award, the Proposer must report the information to the OCR on the appropriate form in order for it to count toward the DBE goal. The Contractor must submit a DBE Description of Work and Field Monitoring Report (Exhibit A Form) and the DBE’s bid or proposal. OCR must grant its approval for DBE credit. Failure to comply with this requirement may result in a determination that the DBE’s participation is ineligible to count toward the DBE goal. Upon OCR approval, the additional DBE commitment will be incorporated into the contract and shall be considered a contract specification.

ADMINISTRATIVE RECONSIDERATION

If the Director determines that the Proposer failed to make adequate good faith efforts, the Proposer may request an administrative reconsideration. If the Proposer does not make a timely written request for administrative reconsideration as described herein, the Proposer will be deemed to have waived its right to request administrative reconsideration.

The Proposer’s request for administrative reconsideration must be made in writing. Requests sent by fax or personal delivery must be received by the MnDOT Office of Civil Rights no later than 4:30 PM on the fifth business day after the Proposer receives written notice of the determination. Administrative reconsideration requests sent by U.S. mail must be postmarked no later than the fifth business day after the Proposer receives notice of the determination. The Proposer is deemed to have notice as of the date indicated on the certified mail receipt signed by the Proposer, or its representative, at the time of delivery. The Proposer must submit the written request for reconsideration to the attention of **MnDOT Deputy Commissioner at MnDOT, 395 John Ireland Blvd. St. Paul, Minnesota 55155; or by fax 651-366-4795. A copy of the request must be sent to the Director of the Office of Civil Rights at the same address or fax 651-366-3129.**

The Commissioner of MnDOT will designate officials to serve as Reconsideration Officials. The Reconsideration Officials shall not have had any role in the original determination that the Proposer failed to meet the DBE goal or failed to make adequate good faith efforts to do so.

In the reconsideration process, the Proposer will have the opportunity to:

- Provide written documentation or argument concerning the issue of whether the Proposer met the goal or made adequate good faith efforts to do so.
- Meet in person with the Reconsideration Officials to discuss the issue of whether the Proposer met the goal or made adequate good faith efforts to do so.

The Reconsideration Officials will reconsider the record documenting the good faith efforts of the Proposer. The reconsideration process will include the documents and arguments that the Proposer is permitted to submit. The reconsideration process is a review only of the good faith efforts made by the Proposer as of the date and time the submission was due. Good faith efforts made subsequent to that date will not be considered.

MnDOT will provide the Proposer with a written decision on reconsideration, explaining the basis for the determination **within 5 business days following the date scheduled for the Proposer to meet with the Reconsideration Officials to discuss the issue.** In accordance with 49 CFR § 26.53(d)(5), the result of MnDOT’s reconsideration process is not subject to administrative appeal to the U.S. Department of Transportation.

EFFECT OF SUPPLEMENTAL AGREEMENTS

The dollar amount of a supplemental agreement or any other contract modification that increases or decreases the work in which DBE participation has been committed in the Proposal documents will be likewise added or subcontracted from the total contract base figure used to compute the portion of the contract dollars actually paid to DBE firms. Revised total contract dollar amounts must be shown on the Contractor Payment Form and Total Payment Affidavit submitted to MnDOT.

FAILURE TO FULFILL DBE COMMITMENT

A contractor that fails to fulfill the DBE commitment is subject to appropriate administrative sanctions if the following factors exist:

- a. the contractor fails to either (1) meet, or (2) make adequate good faith efforts to meet, the DBE commitment it represented in its GFE submission;
- b. the failure is through no fault of the DBE firm; and
- c. the failure is not the result of a modification made by MnDOT or the project owner that reduces the scope of work the DBE is to perform.

Sanctions may include, but are not limited to, MnDOT withholding progress payments and monetary deductions from the contract proceeds. MnDOT may deduct a sum equal to the portion of the DBE commitment not fulfilled.

MnDOT may allow for an adjustment of the Contractor's DBE commitment if the DBE participant that was part of the original commitment fails to perform and cannot be replaced with another DBE subcontractor despite the contractor's adequate good faith efforts to find another DBE to perform the same amount of work.

DBE REPLACEMENT

The Contractor must request prior written consent from MnDOT to terminate a DBE firm. Written consent is required if the termination occurs any time after a Contractor submits an affidavit, subcontract, or the DBE Description of Work and Field Monitoring Report (Exhibit A) indicating that the DBE firm will perform on the project. This includes, but is not limited to, instances in which a Prime Contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Pursuant to 49 CFR §26.53(f), MnDOT will only provide such written consent if it agrees, for reasons stated in its concurrence document, that the Prime Contractor has good cause to terminate the DBE firm. Under this section, good cause includes the following circumstances:

- a. The listed DBE subcontractor fails or refuses to execute a written contract.
- b. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work in the subcontract results from the bad faith or discriminatory action of the Prime Contractor.
- c. The listed DBE subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- d. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- e. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law.
- f. MnDOT has determined that the listed DBE subcontractor is not a responsible contractor.
- g. The listed DBE subcontractor voluntarily withdraws from the project and provides to MnDOT written notice of its withdrawal.
- h. The listed DBE is ineligible to receive DBE credit for the type of work required.
- i. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- j. Other documented good cause that MnDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the Prime Contractor seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to MnDOT its request to terminate and/or substitute a DBE subcontractor, the Prime Contractor must give notice in writing to the DBE subcontractor, with a copy to MnDOT, of its intent to request to terminate and/or substitute, and the reason for the request.

The Prime Contractor must give the DBE five days to respond to the Prime Contractor's notice and advise MnDOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why MnDOT should not approve the Prime Contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), MnDOT may provide a period of shorter than five days.

In addition to post-award terminations, this process applies to pre-award deletions of or substitutions for DBE firms put forward by the Proposer in negotiated procurements. MnDOT will impose appropriate administrative sanctions for noncompliance with these removal requirements.

MnDOT staff may assist the Contractor, when requested, in identifying DBE replacement firms. This assistance may include but is not limited to:

1. Providing the Contractor with information regarding the availability of other DBEs.
2. Providing the Contractor with assistance in locating available DBEs.

PROMPT PAYMENT

Minnesota Statute §16A.1245 requires that the Prime Contractor agrees to pay each subcontractor within ten (10) days of the Prime Contractor's receipt of payment from the state for undisputed services provided by the subcontractor. The Prime Contractor is subject to pay interest charges of 1-1/2 percent per month, or any part of a month, to the subcontractor on any undisputed amount not paid to the subcontractor within the ten (10) day period. This provision applies to DBE and non-DBE subcontractors.

Prime Contractors are required to make prompt and full payment of any retainage kept by the Prime Contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Satisfactorily completed means when all the tasks called for in the subcontract have been accomplished and documented as required by MnDOT. When MnDOT has made incremental acceptances of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Failure to comply with these payment provisions may result in sanctions including the withholding of progress payments to Prime Contractors. Appropriate penalties will be determined by MnDOT. At the conclusion of the contract, the bidder must present the DBE Total Payment Affidavit to the MnDOT Office of Civil Rights. The affidavit must show the total dollar amount of work performed by each DBE business. Submission of this information is a condition of payment.

Proposers are hereby notified that the Federal False Claims Act (31 USC 3729-3733) and State False Claims Act (Minn. Stat. §15C.02) apply to statements and certifications made in connection with the DBE program.

QUARTERLY REVIEW

All Contractors making payments to contractors/subcontractors/suppliers/service providers, regardless of their tier or DBE status, are required to complete and submit the Contractor Payment Form to the MnDOT Office of Civil Rights (OCR), each time payments are made to subcontractors until final payment is made. Failure to comply with the requirements of the form and Minnesota's prompt payment law may cause progress payments to be withheld. One copy of the form must be submitted to the MnDOT OCR and one copy to the Project Engineer/Manager, no later than ten (10) days after receiving payment from MnDOT. A review of the Contractor's compliance with the DBE participation goals will be conducted on a quarterly basis.

LETTER OF INTENT TO SUBCONTRACT

_____ intends to subcontract work for the
(Proposer's Name)*

T.H. _____ Design-Build Project to:
_____ to perform the following types of work:
(Name of Subcontractor/Consultant)

Does this firm have the capacity to perform the agreed value of the Services/Contract?

Yes _____

No _____

Will this firm be performing the Services/Contract with its own equipment and resources?

Yes _____

No _____

Does this DBE firm have subcontractors, consultants, subconsultants, suppliers/regular dealers, or service providers working under them on this Contract? Yes _____ No _____ (If yes, attach a list of subcontractors, subconsultants, regular dealers, or service providers identified to date, along with the appropriate documentation, including this firm for each DBE.)

The subcontractor, consultant, subconsultant, regular dealer, or service provider _____ is is not _____ (Check one) a DBE certified by either the Mn/UCP or the WisDOT UCP.

For the Proposer*:

(Signature)

(Printed Name)

(Title)

(Date)

For the Subcontractor/Consultant:

Confirmed by: (Signature)

(Printed Name)

(Title)

(Date)

(Address)

(Phone Number)

*Note: Proposer's subcontractors, consultants, subconsultants, regular dealers, and service providers that have subs on this project are required to complete and submit this for each DBE firm. Submission of this signed form is not a guarantee that there will be a subcontract.



DBE DESCRIPTION OF WORK AND FIELD MONITORING REPORT (EXHIBIT A)

A contract will not be awarded to a Proposer unless this form is submitted with a signed subcontract, purchase order or affidavit for each DBE participating in the contract. This form is complete when the DBE subcontractor has filled in **all of the applicable information in sections A and B and signs in section C.**

PLEASE PRINT CLEARLY OR TYPE.

Section (A): (All DBE subcontractors, including trucking firms, must complete this section.)

MUST BE COMPLETED BY THE DBE PRINCIPAL

Letting Date: _____

State Project Number: _____

Prime Contractor: _____

Phone #: _____

DBE Subcontractor: _____

Phone #: _____

DBE Principal Name: _____

Total Subcontract \$: _____

DBE Participation Claimed: _____ Percent _____ %

Amount \$ _____

1. Did you bid and sign a subcontract agreement with the above-named prime contractor?

2. Are the items, quantities, and prices listed on the subcontract agreement or affidavit correct?

3. List the line items to be performed:

4. Are there any other agreements not addressed in the subcontract? If yes, please explain:

5. If equipment to be used is other than what is listed in your DBE certification file, please answer the following:
 - a. Will the renting or leasing include any of the following? Attach a copy of the lease(s) or rental agreement(s).
 Equipment _____ Insurance _____ Operator _____ Maintenance _____
 - b. Lessor's name: _____
 Amount to be paid: _____ Number of days to be used: _____
6. Will there be any other firm(s) providing work listed in your (DBE) subcontract?
 If yes, answer the following: Firm's Name: _____ \$ amount of the work: _____
7. What is the name of the person supervising your work on this project? _____
 Is this your employee? _____
8. How many people will you be employing on this project? _____ Minorities: _____ Females: _____
9. Total dollar amount of materials to be supplied?

10. Who are you purchasing the materials from?

11. Please submit Purchase Agreement and/or Purchase Order from manufacturer(s) or primary material supplier(s).

NOTE: This Exhibit 'A' will not be approved without the Purchase Agreement/Purchase Order.

12. Please list all subcontracts that your firm will be performing during the current construction season, including non-DBE work: (**Attach additional sheet if necessary.**)

Project Number	Prime Contractor	Project Location	# of Working Days
1.			
2.			
3.			

MnDOT OCR

Section (B):

TO BE COMPLETED ONLY BY THE DBE TRUCKER

1. The number of hours contracted or quantities to be hauled on this project: _____
2. How many fully operational units will be used on this project? _____
(Tractor/trailers: _____ Dump trucks: _____)
3. How many fully operational units will be yours? _____ (Dump trucks: _____
Tractors/trailers: _____)
4. How many other units will be yours? _____ (Tractors: _____ Trailers: _____)
5. If ITOs or trucking companies are to be used on this project, answer the following:

Name of ITO/Company	Dollar Amount of Contract/Agreement	Number of Dump Trucks, Tractors/Trailers (specify)
1.		
2.		
3.		
4.		

Section (C): (All DBE subcontractors, including trucking firms, must complete Section C.)

I hereby certify that the information presented above is correct. I agree to inform the Office of Civil Rights in writing of any changes within 10 days of the change(s).

DBE Company: _____

DBE Principal: _____

Signature

Title _____

Date _____

Section (D): TO BE COMPLETED BY MnDOT OFFICE OF CIVIL RIGHTS STAFF PERSON

Project Number: _____

District # _____

MnDOT OCR Staff Person: _____

Phone No. _____

Project Engineer: _____

On-site Phone #: _____

Office Phone #: _____

Section (E): TO BE COMPLETED BY PROJECT ENGINEER WHEN THE DBE'S PORTION OF WORK IS 1/3 TO 1/2 COMPLETED

1. Does it appear that the DBE firm is performing the work specified in Exhibit "A" description of work?
Yes _____
No _____

2. Does it appear that the DBE contractor is managing its portion of the project and using its own company employees?
Yes _____
No _____

3. Does it appear that the DBE contractor is providing the equipment for its items of work or other work specified?
Yes _____
No _____

4. Does it appear that the quality of the DBE contractor's performance, scheduling, and project management are meeting industry standards?
Yes _____
No _____

5. Comments:

NOTE: If you, as the Project Engineer, have checked "NO" to any of the above questions or have any other comments, it is important that you contact the MnDOT Office of Civil Rights staff person assigned to this project.

Project Engineer: _____

Date: _____

MnDOT OCR



CERTIFICATE OF GOOD FAITH EFFORTS CONSOLIDATED FORM (GFE FORM) INSTRUCTIONS

This form consolidates the Certificate of Good Faith Efforts, the Good Faith Efforts Affidavit, and the Bidders List in the DBE Special Provisions and is referred to as the GFE Consolidated Form. All parts of this form must be completed unless otherwise stated in the section's heading. The Proposer must complete this form and submit it with the Good Faith Efforts Information by the submission due date as defined in the DBE Special Provisions. Prime Contractors may also use this form to demonstrate good faith efforts when a DBE is replaced after the contract is awarded.

IF THE DBE GOAL IS NOT MET, the Proposer must include in its good faith efforts information a letter explaining in detail the efforts the ALB made to meet the DBE goal. The ALB is required to thoroughly document its good faith efforts, which should include justification of all bids, quotes, or proposals it rejects from certified DBE firms. **THE LETTER SHOULD EXPLAIN HOW THE ALB CONSIDERED THE RELEVANT FACTORS IN 49 CFR Part 26, App. A AND ANY OTHER DEMONSTRATIONS OF GOOD FAITH EFFORTS.**

1. This GFE Consolidated Form must be completed. Please note that **“Part D - SOLICITATION OF SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS” must be completed only if the DBE goal is not met.**
2. A statement of the Proposer's overall plan for obtaining DBE participation noting barriers or challenges the Proposer encountered in obtaining DBE participation. Specifically, detailing all necessary and reasonable steps to achieve the DBE goal or other requirements which, by their scope, intensity, and appropriateness to the objective of achieving the DBE goal, could reasonably be expected to obtain sufficient DBE participation, even if the Proposer was not successful.
3. **The solicitation requirement is twofold and includes the *initial solicitation* and appropriate *follow-up* with interested DBEs.** Evidence of solicitation efforts of DBEs, such as copies of requests for bids sent to DBE firms with identification of the firms clearly stated; fax confirmation sheets displaying the date, fax number, name of DBE firm, and status; list of all DBE firms called, date, contact name and response; or e-mail distribution lists with date and time clearly indicated. The solicitations to DBEs should provide sufficient information about the type of work available on the project.
4. Identify the efforts made to select portions of work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation.
5. A detailed explanation of the reason for not accepting DBE quotes. Each nonaccepted quote should be addressed individually. Provide an explanation of the efforts the Proposer made to negotiate in good faith with interested DBEs. Provide information about any cost comparisons that were considered in the decision to not accept DBE quotes. **The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable.** The Proposer is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. If the Proposer makes such a determination, it should provide a written explanation for this conclusion.
6. A detailed explanation of the Proposer's efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance.
7. A detailed explanation of the Proposer's efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
8. A detailed explanation of the effective use by the Proposer of the services of available minority/women community organizations; minority/women contractor's groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
9. Provide copies of any advertisements placed on hardcopy or websites. Advertisements should include information about the project(s), type(s) of work for which quotes are being solicited, and specific contact information for the Proposer.

Contact the MnDOT Office of Civil Rights if you have any questions: 651-366-3073.

Guidelines for Certificate of Good Faith Efforts (GFE) Consolidated Form

The Proposer /Prime Contractor must show that it took all necessary and reasonable steps to achieve the DBE goal which—by their scope, intensity, and appropriateness to the objective—could reasonably be expected to obtain sufficient DBE participation, even if not fully successful. The criteria for evaluating good faith efforts is described in 49 CFR, Part 26, Appendix A which can be found at <http://www.osdbu.dot.gov/DBEProgram>. An ALB submitting good faith efforts information should address the following factors in its good faith efforts information submission. The information below is not a mandatory list, nor is it exclusive or exhaustive.

Criterion 1: Solicitation Efforts

1. Did the Proposer use the current DBE Directory to identify DBEs?
2. Did the Proposer perform sufficient solicitations given the amount of work to meet the DBE goal?
3. Did the Proposer break out and solicit for work in economically feasible units?
4. Did the Proposer solicit for work that it otherwise would self-perform?
5. Were DBEs with business operations in close geographic proximity to the project solicited?

Criterion 2: Timely Notice

1. Did the Proposer send timely written (e-mail/fax) solicitation notices to certified DBE firms?
2. Did the solicitation notice include the following:
 - a. Name and location of project
 - b. Bid date
 - c. Scope of work requested
 - d. Location where DBEs can review plans and specifications
 - e. Date and time to submit quote
 - f. Contact name for technical assistance
 - g. Any special requirements

Criterion 3: Finance and Bonding Outreach

1. Did the Proposer offer assistance by providing contacts for possible bonding, insurance, and lines of credit?
2. Did the Proposer offer assistance by providing technical assistance in these areas?

Criterion 4: Proposer Follow-Up

1. Did the contractor maintain a follow-up log from the initial solicitation? The log must show:
 - a. Type of contact (fax, telephone, e-mail)
 - b. Name of contact person
 - c. Name of DBE firm
 - d. Date and time of DBE contact
 - e. Response received
 - f. Reason for DBE not bidding project (if applicable)

Criterion 5: Proposer DBE Program Outreach and Support

1. Did the Proposer host DBE informational workshops, attend Minnesota Department of Transportation (MnDOT) sponsored DBE events such as networking sessions, DBE conferences, DBE/ Proposer meetings, etc.?
2. Did the Proposer contact minority business organizations about DBE opportunities?

Note: The submission due date is **the date Price Proposals are due** in accordance with the MnDOT Design-Build DBE Special Provisions. Contact the MnDOT Office of Civil Rights if you have any questions: 651-366-3073

**MINNESOTA DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS
CERTIFICATE OF GOOD FAITH EFFORTS CONSOLIDATED FORM**

This Certificate of Good Faith Efforts Consolidated Form (GFE Consolidated Form) is required to demonstrate that the Proposer either met the DBE goal or made adequate good faith efforts to meet the DBE goal pursuant to 49 CFR Part 26, Appendix A. Please refer to the instruction sheet prior to completing the form. This form and all supporting good faith efforts documentation must be provided to the MnDOT Office of Civil Rights prior to the submission due date as defined within the Design-Build DBE Special Provisions.

PART A – PROPOSER’S INFORMATION (This part must be completed.)				
COMPANY NAME				
ADDRESS	STREET	CITY	STATE	ZIP CODE
PHONE #	FAX #		E-MAIL ADDRESS	
CONTACT PERSON			TITLE	

PART B – PROJECT DESCRIPTION (This part must be completed.)			
STATE PROJECT #	CONTRACT # (If Applicable)	<input type="checkbox"/> Attach copy of MnDOT Advertisement	
ANTICIPATED START DATE (Based on progress schedule)		EXPECTED COMPLETION DATE (Based on progress schedule)	
DBE GOAL %	VS	DBE COMMITMENT %	(Type of GFE Information – Check one only) <input type="checkbox"/> Pre-award <input type="checkbox"/> Post-award/Execution
TOTAL DBE PARTICIPATION DOLLARS BASED ON ADVERTISED DBE GOAL (Total prime bid \$ * DBE % Goal)			

PART C – PROJECT SUMMARY AMOUNTS (This part must be completed.)	
TOTAL PRIME BID	\$
TOTAL DOLLARS COMMITTED TO NON-DBES (Not including suppliers)	\$
TOTAL DOLLARS COMMITTED TO DBES (Not including suppliers)	\$
TOTAL DOLLARS COMMITTED TO DBE SUPPLIERS (Total paid to DBE suppliers 60%)	\$
WORKED PERFORMED BY PRIME	\$
PERCENT OF WORK PERFORMED BY PRIME	%
TOTAL DBE PARTICIPATION REMAINING (Difference between DBE goal \$ and DBE commitment \$)	\$

PART D – SOLICITATION OF SUBCONTRACTORS, SUPPLIERS, AND SERVICE PROVIDERS (Complete this part only if DBE goal is not met.)

List all subcontractors solicited, both DBE and non-DBE contractors, truckers, and suppliers for this specific project. Include initial contact and follow-up dates, as well as methods of contact (phone, fax, e-mail, etc.).

The good faith effort submission should include evidence of the solicitation effort such as copies of request for bids sent to DBE firms with the name of the DBE firms clearly identified; fax confirmation sheets showing the date, fax number, name of DBE firm, confirmation the fax was sent; list of all DBE firms called showing time of call, person contacted, and response; or e-mail lists with time/day sent clearly indicated.

Subcontractor/Supplier/Service Provider	DBE?		Phone #	Dates, Method of Contact		Description of Work	Dollar Amount of Quote
	Yes	No		DATES	METHOD		
1	<input type="checkbox"/>	<input type="checkbox"/>					
2	<input type="checkbox"/>	<input type="checkbox"/>					
3	<input type="checkbox"/>	<input type="checkbox"/>					
4	<input type="checkbox"/>	<input type="checkbox"/>					
5	<input type="checkbox"/>	<input type="checkbox"/>					
6	<input type="checkbox"/>	<input type="checkbox"/>					
7	<input type="checkbox"/>	<input type="checkbox"/>					
8	<input type="checkbox"/>	<input type="checkbox"/>					
9	<input type="checkbox"/>	<input type="checkbox"/>					
10	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					
	<input type="checkbox"/>	<input type="checkbox"/>					

Make additional copies of this page as necessary.

PART E - DBE COMMITMENTS (This part must be completed.)			
DBEs COMMITMENTS		Description of Work	Dollar Amount of Bid/ Proposal
List only DBEs that have executed Exhibit A forms.			
I. DBE Contractor Information			
1	DBE Contractor Name		
	Contact Name		
	Address		
	Federal Tax #	E-mail	
	Phone	Fax:	
2	DBE Contractor Name		
	Contact Name		
	Address		
	Federal Tax #	E-mail	
	Phone	Fax:	
3	DBE Contractor Name		
	Contact Name		
	Address		
	Federal Tax #	E-mail	
	Phone	Fax:	
4	DBE Contractor Name		
	Contact Name		
	Address		
	Federal Tax #	E-mail	
	Phone	Fax:	
5	DBE Contractor Name		
	Contact Name		
	Address		
	Federal Tax #	E-mail	
	Phone	Fax:	

Make additional copies of this page as necessary.

PART F – NON-DBE QUOTES SUBMITTED (This part must be completed.)						
NON-DBE COMMITMENTS			Description of Work	Dollar Amount of Bid/Proposal	Will Firm Be Used?	
List all non-DBE firms that provided quotes or bid proposals. Indicate whether the quotes were accepted. Please include a copy of their quote(s).						
II. NON-DBE Contractor Information						
1	NON-DBE Contractor Name					Y or N
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				
2	NON-DBE Contractor Name					Y or N
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				
3	NON-DBE Contractor Name					Y or N
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				
4	NON-DBE Contractor Name					Y or N
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				
5	NON-DBE Contractor Name					Y or N
	Contact Name					
	Address					
	Federal Tax #	E-mail				
	Phone	Fax:				

Make additional copies of this page as necessary.

PART G - DBES QUOTED BUT NOT SELECTED (This part must be completed.)			
If DBE quotes were rejected, attach a separate sheet of paper explaining the specific basis for rejecting any DBE quote. Note: Additional cost is not in itself sufficient reason for rejecting a DBE quote. However, prime contractors need not accept excessive or unreasonable DBE quotes. The contractor's standing within its industry or memberships in specific groups (for example union vs. non-union employee status) are not legitimate causes for the rejection or nonsolicitation of a quote in the contractor's efforts to meet the project goal. (See Instructions attached to this form.) Please include a copy of the quote(s) received.			
QUOTED DOLLARS	DBES WHO QUOTED, BUT WERE NOT SELECTED	TYPE OF WORK QUOTED	REASON NOT SELECTED
1.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
2.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
3.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
4.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
5.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
6.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
7.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
8.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
9.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
10.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
11.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
12.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
13.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
14.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
15.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
16.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
17.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
18.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
19.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
20.			Clearly state specific basis for rejecting the DBE on a separate sheet of paper
NUMBER OF DBES SOLICITED			

PART H – CERTIFICATION / GOOD FAITH EFFORTS AFFIDAVIT (This part must be completed.)

STATE OF MINNESOTA COUNTY OF _____

I, _____, being first duly sworn, state as follows:
 (Full Name)

1. I am the _____ of _____
(Title) (Name of Individual, Company, Partnership, or Corporation)
that has been identified as a Proposer for the State Project _____ .

2. I have the authority to make this affidavit for and on behalf of the Proposer.

3. The information provided in the attached Certificate of Good Faith Efforts is true and accurate to the best of my belief.

SIGNATURE (Bidder or Authorized Representative) TITLE DATE

Subscribed and sworn to before me

This _____ day of _____, 20

Notary Public

My commission expires _____, 20 _____

Under Sec. 26.107 of “49 CFR Part 26,” dated February 2, 1999, if at any time the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in federal programs.

CONTRACTOR PAYMENT FORM

State Project Number _____ Prime Contractor: _____

1st Tier Sub-Contractor: _____

Payment Reporting Period: _____ From: _____ To: _____

Instructions: All Contractors making payments to contractors/subcontractors/suppliers/service providers, regardless of their tier or DBE status, are required to complete and submit this form to the MnDOT Office of Civil Rights (OCR) each time payments are made to subcontractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the MnDOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from MnDOT.

CONTRACTOR INFORMATION		ORIGINAL CONTRACT AMOUNT	COMMITTED DBE %	ACTUAL DBE % TO DATE
Name:				
Address:				
Phone:				
Name of Subcontractor/Supplier	DBE? (Check if Yes)	Description of Work	Subcontract Amount	
1.	<input type="checkbox"/>	1.	1.	
2.	<input type="checkbox"/>	2.	2.	
3.	<input type="checkbox"/>	3.	3.	
4.	<input type="checkbox"/>	4.	4.	
5.	<input type="checkbox"/>	5.	5.	
6.	<input type="checkbox"/>	6.	6.	
Amount of Current Payment	Total Subcontractor Payment-To-Date	% Paid to date	Final Payment? Yes/No	
1.	1.	1.	1.	
2.	2.	2.	2.	
3.	3.	3.	3.	
4.	4.	4.	4.	
5.	5.	5.	5.	
6.	6.	6.	6.	
Company Officials Signature & Title	Date Signed	Name & Title of Individual Completing Report (Type or Print Clearly)		
Title:		Title:		
Phone:	Fax:	Phone:	Fax:	

CONTRACTOR PAYMENT FORM INSTRUCTIONS

All Contractors making payments to contractors/subcontractors/suppliers/service providers, regardless of their tier or DBE status, are required to complete and submit this form to the MnDOT Office of Civil Rights (OCR) each time payments are made to subcontractors until final payment is made. Failure to comply with this form and Minnesota's prompt payment law may cause progress payments to be withheld. Submit one copy of this form to the MnDOT OCR and one copy to the Project Engineer, no later than ten (10) days after receiving payment from MnDOT.

State Project Number: As identified by MnDOT

Prime Contractor: The contractor who was awarded the project.

1st Tier Subcontractor: If a subcontractor has a subcontractor, list the 1st tier sub here and then list all of the 2nd tier subcontractors in the Name of Subcontractor/Supplier area. *All areas should be filled in regarding the prime as well.*

Payment Reporting Period: This should reflect the current payment period.

Contractor Information: Information for contractor who is making the payments. This must be filled out completely.

Original Contract Amount: Prime contractor's contract dollar amount.

Committed DBE%: The DBE commitment certified in the prime's bid is the minimum percentage of DBE participation on the project.

Actual DBE % to Date: The percentage met to date.

Name of Subcontractor/Supplier: Company that is working for the prime contractor on this project. (If a sub was contracted for more than one contract, list each contract separately.)

DBE?: Check this box if the subcontractor is a certified DBE in Minnesota. You can find a list of the DBE firms certified in Minnesota at <http://www.dot.state.mn.us/civilrights/dbedirectory.html>.

Description of Work: The type of work the subcontractor was contracted for.

Subcontract Amount: The dollar amount the subcontractor was contracted for.

Amount of Current Payment: The current dollar amount being paid to the sub.

Total Subcontractor Payment to Date: Total dollar amount paid to the sub, including the current payment.

% Paid to Date: Percentage of total payments made in comparison to the prime's award amount.

Final Payment?: Indicate whether this is the final payment being made to the sub.

Company Official's Signature & Title: Self-explanatory

Name & Title of Individual Completing Report: Self-explanatory

If you have questions on completing the form, call the Office of Civil Rights at (651) 366-3073.

DBE TOTAL PAYMENT AFFIDAVIT

Pursuant to MnDOT Standard Specifications for Construction, Section 1908, the following DBE Total Payment Affidavit shall be executed by the Prime Contractor after all work contracted to be performed by DBEs has been satisfactorily completed. Identify each DBE firm that worked on the project and the dollar amount of the subcontract. If the dollar value of a DBE firm's total work is less than the DBE's original subcontract, please attach an explanation.

State Project Number: _____

STATE OF MINNESOTA COUNTY OF _____

I, _____, being first duly sworn, state as follows:

(Full Name)

1. I am the authorized representative of _____ (name of individual, company, partnership, or corporation) and I have the authority to make this affidavit for and on behalf of said Prime Contractor.
2. The following DBE subcontractors/suppliers/service providers/subconsultants have performed work on the above project with a total dollar value of:

Name of DBE Firm	Dollar Amount of Subcontract	Total Dollar Amount
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

3. I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Signed: _____

(Prime Contractor or Authorized Representative)

Subscribed and sworn to before me

This _____ day of _____, 20 _____

(Notary Public)

My commission expires _____, 20 _____

Prepare Affidavit in duplicate. Submit one original to the Project Engineer and one original to:

MnDOT's Office of Civil Rights
395 John Ireland Blvd., MS 170
St. Paul, MN 55155

No. 1908 – Standard Specifications for Construction

Unless the Contractor has presented an affidavit showing the total dollar amounts of work performed by Disadvantaged Business Enterprises (DBE), final payment may be withheld.

Abbreviations used without definitions in TRB publications:

A4A	Airlines for America
AAAE	American Association of Airport Executives
AASHO	American Association of State Highway Officials
AASHTO	American Association of State Highway and Transportation Officials
ACI-NA	Airports Council International-North America
ACRP	Airport Cooperative Research Program
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
ASCE	American Society of Civil Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
ATA	American Trucking Associations
CTAA	Community Transportation Association of America
CTBSSP	Commercial Truck and Bus Safety Synthesis Program
DHS	Department of Homeland Security
DOE	Department of Energy
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
HMCRP	Hazardous Materials Cooperative Research Program
IEEE	Institute of Electrical and Electronics Engineers
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
ITE	Institute of Transportation Engineers
MAP-21	Moving Ahead for Progress in the 21st Century Act (2012)
NASA	National Aeronautics and Space Administration
NASAO	National Association of State Aviation Officials
NCFRP	National Cooperative Freight Research Program
NCHRP	National Cooperative Highway Research Program
NHTSA	National Highway Traffic Safety Administration
NTSB	National Transportation Safety Board
PHMSA	Pipeline and Hazardous Materials Safety Administration
RITA	Research and Innovative Technology Administration
SAE	Society of Automotive Engineers
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (2005)
TCRP	Transit Cooperative Research Program
TEA-21	Transportation Equity Act for the 21st Century (1998)
TRB	Transportation Research Board
TSA	Transportation Security Administration
U.S.DOT	United States Department of Transportation

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