



CAPA DBE/MB/WB Contract Administration Training

*DBE/MB/WB Contract Provisions*

Ron Hancock, PE  
Lamar Sylvester, PE



# DBE/MB/WB Contract Administration

1. Program Requirements
2. Avoiding Pitfalls
3. HELP!!!!!! Seeking Assistance

# Goals



# Program Overview

## Federal and State Programs

- **Federal Disadvantaged Business Enterprise program (DBE) - Code of Federal Regulations (Title 49, Part 26)**
  - One Contract Goal - DBE
- **State Minority (MB) and Women (WB) Business Enterprise program - G.S. 136-28.4**
  - Two Separate Contract Goals - MB and WB
  - Banking

# Program Goals Review

## NCDOT FFY 2015 DBE/MBE/WBE Aspirational Goals

Program	NCDOT	Annual NCDOT Goal *
DBE	Division of Highway	14.7%
MBE	Division of Highway	6.7%
WBE	Division of Highway	7.1%

*\* **Note:** These are annual DBE/MBE/WBE aspirational goals. The annual goal should not be confused with project specific goals.*

# Program Goals Review

## NCDOT FFY 2016 - 2018 DBE Aspirational Goal

Program	NCDOT	Annual NCDOT Goal *
DBE	Division of Highway	13.6%

*\* **Note:** These are annual DBE/MBE/WBE aspirational goals. The annual goal should not be confused with project specific goals.*

# Project Specific Goals

- Geographic Location
- Project Type
- Line Items
- Typical Subcontract Line Items
- Typical Line Items Performed By DBEs
- Goal Questions
  - Prior to Award – Randy Garris
  - After Award – Resident Engineer

# Submitting Participation Letting Day

- Submit **ALL** DBEs with bid
- Letter of Intent (LOI)
  - Successful Low Bidder
  - After Letting Day (noon on 6<sup>th</sup> day)
  - Only needed for DBEs used to meet Goal
  - These become the Committed DBEs
- Additional DBEs
  - No Letter of Intent submission
  - Replacement rules do not apply

# Counting Participation

## What's Eligible?

- Subcontractors (including 2<sup>nd</sup> Tier)
  - DBE – Eligible
  - Non-DBE – Not Eligible
- Material Suppliers and Manufacturers
  - DBE Suppliers – 60%
  - DBE Manufacturers – 100%

# Seeking Participation

## Good Faith Effort

- Do You Have a Plan
- Outreach Efforts
- Following Up
- Seeking Assistance
- Documentation

# Good Faith Effort Criteria

- A – Soliciting thru all reasonable, available means
- B – Selecting portions of work
- C – Providing Adequate Information
- D – Negotiating Seeking Assistance
- E – Not rejecting DBE without sound reason

# Good Faith Effort Criteria

- F – Assisting with bonding, insurance, credit lines
- G – Assisting with equipment, supplies, materials
- H – Contacting other organizations for assistance
- I – Any other evidence

# GFE Submittals

Letting Month	GFE	Total Projects	% GFE
November 2014	3	7	43%
December 2014	0	5	0%
January 2015	2	16	13%
February 2015	2	12	17%
March 2015	0	10	0%
April 2015	4	12	33%
May 2015	3	18	17%
June 2015	4	23	17%
July 2015	3	25	12%
August 2015	2	7	29%
September 2015	3	8	38%
Totals	26	143	18%

# *Performance*



# Contract Commitment List

## LIST OF WBE PARTICIPANTS

VENDOR NUMBER	DBE NAME ADDRESS	WORK CODE TYPE OF WORK	CERT TYPE AMOUNT	
10129	CONCRETE SPECIALTY CONTRACTORS N/A POST OFFICE BOX 2303 , SHELBY, NC 28151		Sub	35,479.08 Not Committed
5762	WB JLS COMPANY LLC P.O. BOX 1265 , SKYLAND, NC 28776		Sub	153,075.00 Committed
3404	N/A HERITAGE GRADING & PAVING, INC. POST OFFICE BOX 1076 , BURNSVILLE, NC 28714		Sub	47,764.00 Not Committed
3765	N/A STAY ALERT SAFETY SERVICES INC POST OFFICE BOX 467 , KERNERSVILLE, NC 27285		Sub	4,926.24 Not Committed
5319	N/A NEW DIMENSIONS IN PAVEMENT MARK P.O. BOX 9928 , ASHEVILLE, NC 28815		Sub	104,926.44 Not Committed
			TOTAL:	\$153,075.00 8.37%

# Performing the Work

## What is CUF?

CUF: **Commercially Useful Function**

49 CFR 26 defines a 'commercially useful function' (CUF) as when a DBE actually performs, manages, and supervises the work under their subcontract.

# CUF Checklist

- DBE firm is committed for the work and has an approved subcontract
- DBE firm is responsible for a distinct element of the work
- DBE firm manages its own forces and performs its own work
- DBE firm provides its own materials and equipment
- Prime does not perform any part of the work on behalf of the DBE firm

# Joint Checks

- Two party check payable to subcontractor and material supplier
- Special Provisions require prior notification when claiming DBE participation credit
- Process initiated by subcontractor not prime
- Subcontractor Responsibilities:
  - negotiate price, determine quantities, order, install, pay
- Form should be submitted to RE with Subcontract Approval Form (SAF)

# Joint Checks

- Contractor must send joint check to subcontractor not supplier
- Subcontractor pays supplier
- Additional documentation sent to RE
  - Copy of joint check
  - Copy of material quote from supplier to subcontractor



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

JOINT CHECK NOTIFICATION FORM (FOR DBE/MBE/WBE FIRMS ONLY)

CONTRACT/PROJECT NUMBER:	NAME OF PRIME CONTRACTOR:
--------------------------	---------------------------

Name of Subcontractor \_\_\_\_\_  
 Name of Material Supplier \_\_\_\_\_  
 Items of work \_\_\_\_\_  
 Comments \_\_\_\_\_  
 Who requested joint check utilization? \_\_\_\_\_ Prime \_\_\_\_\_ Sub \_\_\_\_\_ Supplier  
 Why? \_\_\_\_\_

**Information:**

NCDOT will closely monitor the use of joint checks, and this practice will be subject to review by NCDOT's DBE Compliance Audit Unit within the Office of Inspector General. To receive DBE/MBE/WBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE/MBE/WBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself." Only when a DBE/MBE/WBE meets all requirements should credit be counted for the procurement of items by the DBE/MBE/WBE. For more information, visit <http://www.ncdot.org/business/ocs/>.

Please read the attached Joint Check Procedures. If the proper procedures are not followed or the department determines that the arrangements results in a lack of independence for the DBE involved, no credit for the DBEs participation as it relates to the material cost will be used toward the contract goal requirement and the prime will need to make up the difference elsewhere on the project.

*I have read and understand the above information and the attached Joint Check Procedures. I hereby acknowledge that the information provided on this form is true and accurate.*

**Authorized Subcontractor Representative:**

\_\_\_\_\_  
 Signature Title Date

**Authorized Material Supplier Representative:**

\_\_\_\_\_  
 Signature Title Date

**Authorized Prime Contractor Representative:**

\_\_\_\_\_  
 Signature Title Date

**Received:**

NCDOT Contract Administrator \_\_\_\_\_ Date \_\_\_\_\_  
 Documentation for financial transactions attached? \_\_\_\_\_  
 Comments \_\_\_\_\_

# Replacement Rules

- Acceptable reasons
  - Performance
  - Decertification
- Prime must have adequate documentation of performance related issues
- Can use additional (non-committed) DBEs submitted at bid time
- Good Faith Effort if no additional DBEs
- Replacement Form submitted to RE
- DBE has 5 days to Respond/Contest

# DBE Replacement Form



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

## DBE MBE WBE REPLACEMENT REQUEST FORM

The North Carolina Department of Transportation (NCDOT) is committed to the participation of Disadvantaged, Minority and Woman Business Enterprises (DBE/MBE/WBE), in contracting opportunities in accordance with 49 Code of Federal Regulations (CFR).

In accordance with the Special Provisions, the Contractor shall not terminate a committed DBE/MBE/WBE subcontractor for convenience or perform the work with its own forces or those of an affiliate. Reasonable methods to resolve performance disputes must be applied. The contractor shall follow the attached Instructions for Submittal of Replacement. Replacement of a DBE/MBE/WBE without written approval from NCDOT is a violation of contract provisions and may result in the Contractor being disqualified from bidding for a period of up to 6 months.

Contract Number: \_\_\_\_\_  
 DBE/MBE/WBE being replaced: \_\_\_\_\_  
 Explanation for Replacement: \_\_\_\_\_  
 \_\_\_\_\_  
 Subcontract Amount: \_\_\_\_\_  
 Amount of Subcontract Remaining: \_\_\_\_\_  
 Line Items: \_\_\_\_\_

If a committed DBE/MBE/WBE subcontractor is terminated for good cause as specified in the Special Provisions the Contractor will make a good faith effort to find another DBE/MBE/WBE subcontractor to substitute for the terminated DBE/MBE/WBE. These good faith efforts shall be directed at finding another DBE/MBE/WBE to perform at least the same amount of work under the contract as DBE/MBE/WBE that was terminated, to the extent needed to meet the contract goal established for the project

Replacement DBE/MBE/WBE: \_\_\_\_\_  
 Amount of Subcontract: \_\_\_\_\_  
 Line Items: \_\_\_\_\_  
 Committed DBE/MBE/WBE Signature: \_\_\_\_\_ Date \_\_\_\_\_

By signing this document, the Contractor, DBE/MBE/WBE and the NCDOT Contract Administrator acknowledges that the 5 days to respond was given, and concurs with the process of replacing the named DBE/MBE/WBE subcontractor.

Original DBE/MBE/WBE Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Prime Contractor Signature \_\_\_\_\_ Date \_\_\_\_\_  
 NCDOT Contract Administrator \_\_\_\_\_ Date \_\_\_\_\_

Upon Completion Send to: State Contractor Utilization Engineer  
State Construction Engineer

## INSTRUCTIONS FOR SUBMITTAL OF DBE/MBE/WBE REPLACEMENT REQUEST FORM

IN ADDITION TO SUBMITTING THIS FORM, THE CONTRACT ADMINISTRATOR MUST ENSURE THAT THE FOLLOWING STEPS ARE SATISFIED

1. Prior to starting the replacement process, the prime contractor is responsible for coordinating with the DBE/MBE/WBE subcontractor to see if they are willing and able to perform the work as indicated in their contract. If the contractor notices a reoccurring issue with a DBE/MBE/WBE subcontractor they are to notify the Contract Administrator and keep them abreast of the issues.
2. If the DBE/MBE/WBE subcontractor cannot perform the work or if the Contractor shows good cause for replacement, the Contract Administrator will coordinate with the State Contractor Utilization Engineer to begin the DBE/MBE/WBE replacement process. The State Contractor Utilization Engineer will coordinate with other sections as appropriate.  
*(Examples of good cause include: DBE fails or refuses to execute a written contract; DBE fails or refuses to perform the work of its subcontract consistent with normal industry standards; DBE fails to meet reasonable, nondiscriminatory bond requirements; DBE becomes bankrupt, insolvent, or exhibits credit unworthiness; DBE is ineligible to work because of suspension and debarment proceedings; DBE voluntarily withdraws from the project and provides written notice; DBE is ineligible to receive DBE credit for the type of work required; DBE owner dies or becomes disabled and is unable to complete its work; or other documented good cause that compels termination. Good cause does not exist where failure or refusal to perform the work of the subcontract results from bad faith or discriminatory action of the prime contractor.)*
3. Before requesting NCDOT's consent for the proposed termination/replacement of a DBE, the contractor shall give written notice of the proposal, including the reason for termination/replacement, to the DBE/MBE/WBE with a copy to the Contract Administrator. The DBE/MBE/WBE shall be given five days to respond unless it is reduced by public necessity (e.g. safety).
4. After the notice period has passed, the Contract Administrator will ensure the Contractor has submitted all supporting documentation for DBE/MBE/WBE replacement. Letters, emails or any other correspondence between the Contractor, the DBE/MBE/WBE subcontractor, and the Contract Administrator will be considered supporting documentation. This documentation must provide valid reason(s) for replacement as well as the opportunity to correct the issue. Contractors cannot replace for convenience or perform the work with its own forces or those of an affiliate.
5. If the Contractor is given approval by the Contract Administrator to replace a DBE/MBE/WBE subcontractor, the Contract Administrator will submit all documentation of Good Faith Effort to the Prime Contractor (Phone logs, emails, any other documentation to support a Good Faith Effort) to the State Contractor Utilization Engineer. The Prime Contractor shall be made aware that he/she needs to make a Good Faith Effort to replace a DBE with a DBE on federal contracts. On state funded contracts Good Faith Efforts shall be made to replace a MBE with a MBE, and a WBE with a WBE.  
  
Per the Special Provisions, the Contractor may utilize additional DBE(s) submitted at time of bid to cover the same amount of work as the DBE/MBE/WBE that was terminated.
6. Signature lines on form: Ideally, the form should contain the signature of the original DBE/MBE/WBE subcontractor being replaced. However, if this is not possible (i.e. the DBE/MBE/WBE will not sign), then documentation supporting the decision and acknowledgement of the reasons for replacement by the DBE/MBE/WBE subcontractor should be attached. The form shall also be signed by the replacement DBE/MBE/WBE to show their participation on the project as a committed DBE/MBE/WBE.
7. A copy of the replacement documentation and the form should be sent to the State Contractor Utilization Engineer in the Utilization and Certification Section of the Office of Equal Opportunity and Workforce Services and the State Construction Engineer.

# Additional DBE Subcontractors

## LIST OF WBE PARTICIPANTS

VENDOR NUMBER	DBE NAME ADDRESS	WORK CODE TYPE OF WORK	CERT TYPE AMOUNT	
10129	CONCRETE SPECIALTY CONTRACTORS N/A POST OFFICE BOX 2303 , SHELBY, NC 28151		Sub	35,479.08 Not Committed
5762	WB JLS COMPANY LLC P.O. BOX 1265 , SKYLAND, NC 28776		Sub	153,075.00 Committed
3404	N/A HERITAGE GRADING & PAVING, INC. POST OFFICE BOX 1076 , BURNSVILLE, NC 28714		Sub	47,764.00 Not Committed
3765	N/A STAY ALERT SAFETY SERVICES INC POST OFFICE BOX 467 , KERNERSVILLE, NC 27285		Sub	4,926.24 Not Committed
5319	N/A NEW DIMENSIONS IN PAVEMENT MARK P.O. BOX 9928 , ASHEVILLE, NC 28815		Sub	104,926.44 Not Committed
			TOTAL:	\$153,075.00 8.37%

# Trucking

- 49 CFR 26.55(d)(2)
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

# Trucking

- On-project Hauling
- Plant Hauling
- Trucking Plan
- 50/50 Rule

## Truck Plan

Contract No: C123456  
 County: Dancoe

### Listing of Firms

Trucking Firm	DBE Certification	Number of Trucks Owned
Over the Hill Trucking	DBE/MBE	5
Lucky Trucking	DBE/MBE	3
Well Transportation	DBE/MBE	8
Richie Rich Trucks	DBE/WBE	3
Ball Hauling	None	2
TNT Trucking	None	1

**Total Available Trucks    22**

### Individual Truck Listing

Firm	Truck Type	Truck Number								
			Asphalt	Borrow	Rev. Asp Pymt	#57 Stone	Final Cont Mat'l	Minor Str	Milling Asp	Incidental Milling
Over the Hill Trucking	Mack RD 690A - Quad Axle	Over 1	X	X	X	X	X	X	X	X
	Mack RD 690A - Quad Axle	Over 2	X	X	X	X	X	X	X	X
	Mack RD 690A - Tri Axle	Over 3	X	X	X	X	X	X	X	X
	Mack RD 690A - Quad Axle	Over 4	X	X	X	X	X	X	X	X
	Mack RD 690A - Tri Axle	Over 5	X	X	X	X	X	X	X	X
Lucky Trucking	Ford L-9000 Tri Axle	LT 3	X	X						
	Ford L-9000 Tri Axle	LT 4	X	X						
	Ford L-9000 Tri Axle	LT 5	X	X						
Well Transportation	Mack DM 688S Tri Axle	Well -01	X	X	X					
	Mack RD 690S Quad Axle	Well-03	X	X	X					
	Mack RD 690S Quad Axle	Well-04	X	X	X					
	Mack RD 690S Quad Axle	Well-06	X	X	X					
	Mack RD 690S Quad Axle	Well-11	X	X	X					
	Mack RD 690S Quad Axle	Well-10	X	X	X					
	Mack DM 688S Tri Axle	Well-08	X	X	X					
Richie Rich Trucks	Mack DM 688S Tri Axle	Well 07	X	X						
	Mack 690 Quad Axle	RR-11	X	X						
	Mack 690S Tri Axle	RR-22	X	X						
Ball Trucking	Mack 690S Tri Axle	RR-33	X	X						
	Ford L-9000 Tri Axle	Ball 1	X	X						
TNT Trucking	Ford L-9000 Tri Axle	Ball 2	X	X						
	Mack 686LS Quad Axle	TNT 1	X	X						

# Payments

- DBE/MB/WB Payment Tracking System
- Documentation for plant hauling
- Invoices for supplier purchases

# Prompt Payment

- Article 109-4(B)
- Requires payment within 7 days
- Project specific requirement, no combining
- Allows retainage of up to 10%
  - Only if no bond is provided
  - Mutual agreement between Prime and Sub
  - Agreement must be provided to Resident Engineer
  - Must be released when sub's work is complete

*Questions?*

