



NORTH CAROLINA Department of Transportation



DBE Replacement Process WEBINAR

NCDOT District/Resident Engineers

Construction Unit

February, 2019

Overview

- Key Updates to DBE Policy and Forms
- Types of Replacements
- General Statistics for CY2018
- List of Good Causes for Replacement
- Replacement Steps
- Sample 5-Day Notice Letter (Prime to DBE Firm)
- Changes in the Scope of Work
- Highlight changes in the policy and forms

Key Updates to DBE Replacement Policy

Highway Division - Construction Unit

Effective 1-15-2019 Letting Date

DBE Special Provisions, DBE Replacement Form and Instructions

1	Added Definition for DBE "Replacement/Substitution" to DBE Special Provisions <i>Replacement / Substitution – A full or partial reduction in the amount of work subcontracted to a committed (or an approved substitute) DBE firm.</i>
2	Added "PARTIAL" DBE Replacement Language to Special Provisions, DBE Replacement Form & Instructions
3	Added Checkboxes for "PARTIAL" and "FULL" Replacements to DBE Replacement Form/Instructions
4	Added Method of Delivery: CERTIFIED MAIL and EMAIL – to DBE Special Provisions, Form & Instructions <i>Contractor must give notice in writing both by certified mail and email to the DBE subcontractor, with a copy to the Engineer of its intent to request to terminate and/or substitute, and the reason for the request.</i>
5	Added "BUSINESS" Days for the 5-Day Response Period to DBE Special Provisions, Form & Instructions <i>Contractor must give the DBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution</i>
6	Added List of "Good Causes" for DBE Replacement to DBE Special Provisions (List of Good Causes was already included on Replacement Form/Instructions)
7	Added "MEETING" Requirement to DBE Form/Instructions <i>Upon receipt of a disputed response from the DBE subcontractor, the Department will conduct a meeting with the Contractor and DBE subcontractor before a making a final determination regarding the replacement.</i>
8	Added Link to "BOWD Supportive Services Form" for business assistance from the Office of Civil Rights <i>Business Opportunity and Workforce Development Unit in the Office of Civil Rights. (Link to BOWDSupportiveServicesFieldForm)</i>
9	Added Line to List Name of NON-DBE Replacement Firm to DBE Replacement Form/Instructions
10	Updates to Procedures in NCDOT Construction Manual

DBE Replacement/Substitution Defined

Replacement / Substitution – A full or partial reduction in the amount of work subcontracted to a **committed** (or an approved substitute) DBE firm.

Full or Partial DBE Replacement

- ❖ Applies to only **COMMITTED** DBE / MBE / WBE firms
- ❖ Partial Replacements – Supplement a portion of DBE's committed work absent performance/contractual issues.
- ❖ Full Replacements – DBE terminated for **GOOD CAUSE**.
- ❖ Good Faith Effort (GFE) Required for Full and Partial Replacements
- ❖ Voluntary and Involuntary Actions, and Decertified Firms
- ❖ Replacement Form **MUST** be filled out for all ACTIONS

General Statistics for CY 2018

- ❖ **Decertified Replacements**

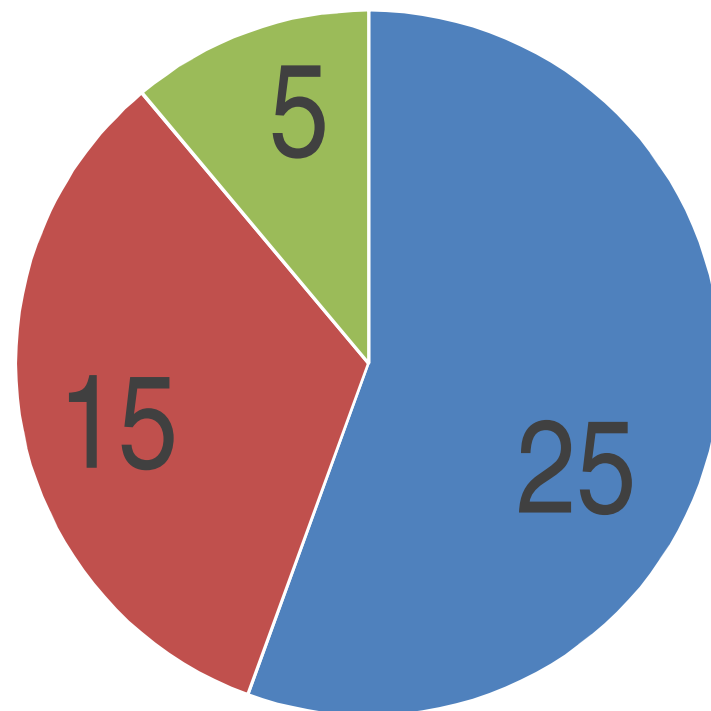
- ❖ Ex. Stay Alert and Curtin Trucking

- ❖ **Voluntary Replacements**

- ❖ Unavailable / Scheduling Conflicts
- ❖ Partial Removals

- ❖ **Involuntary Replacements**

- ❖ Performance Issues



■ Decertified ■ Voluntary ■ Involuntary

List of Good Causes for Replacement

List of Good Cause 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 on 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	The listed DBE subcontractor is not a responsible contractor;
G	The listed DBE voluntarily withdraws from the project and provides written notice of 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 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.

DBE Replacement Steps

STEPS	
1	Determine if Action is a Voluntary, Involuntary or Decertification Replacement
2	RE must contact Area Construction Engineer in the Construction Unit to Assist with this process
3	Area Construction Engineer will record action and coordinate with the Contract Compliance Technician
4	Contract Compliance Technician in the Construction Unit will coordinate w/ support units (E.g. Civil Rights)
5	Voluntary or Decertification: No 5-Day Notice Required/ <i>Need Letter from DBE</i> /Complete Replacement Form
6	Involuntary Actions: Must be based upon a finding of GOOD CAUSE (See List of Circumstances)
7	Prior to Replacement Letter – Prime has addressed and documented issues with DBE Firm
8	If Applicable, Prime should complete BOWD (Business Opportunity and Workforce Development) Supportive Services Form
9	Unresolved Issues – Prime sends “Notice of Intent to Request Replacement/Termination” to DBE & copy RE
10	5-Day Notice Requirement (Allow 5 Business Days for DBE Response) Send by Certified Mail & Email
11	5-Day Response Period: DBE must advise the Prime and RE of reasons why it should not be replaced
12	5-Day Notice period begins on the next business day after written notice is provided to DBE Firm
13	For Disputed Responses, the Department will hold a meeting with the Prime and DBE Firm
14	After notice period, RE (Contract Administrator) will review all documentation to make a determination
15	Signature Line on Replacement Form: Firm’s failure to sign form does not suspend the replacement process
16	If approved, RE (Contract Administrator) should sign and date the replacement form
17	RE must notify the Prime and DBE in writing of its concurrence (or not) to Replace committed DBE firm
18	Not Finished Yet – Next Step ... Good Faith Effort
19	Prime must submit a Good Faith Effort – RE should contact Area Construction Engineer for list of firms
20	Prime must contact firms on list by email or telephone and list reason(s) why DBE quotes not accepted
21	Prime must submit Good Faith Effort documentation to Contract Administrator (Resident Engineer)
22	RE will review Good Faith Effort documentation & coordinate with Area Construction Engineer in CU
23	RE should compile a PDF FILE Copy: 1) Replacement Form; 2) 5-Day Notice; 3) Good Faith Effort; 4) Documentation
24	RE must send to Area Construction Engineer in Construction Unit and CU will disseminate to all UNITS
25	RE must also save the PDF “FILE COPY” to DBE Correspondence Folder in SharePoint
26	EXCEPTION: 5-Day Notice Period may be shorter if the circumstance is a matter of public necessity (e.g. safety)

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26	RE must send to Area Construction Engineer in Construction Unit and CU will disseminate to all UNITS
27	RE must also save the PDF "FILE COPY" to DBE Correspondence Folder in SharePoint
28	EXCEPTION: 5-Day Notice Period may be shorter if the circumstance is a matter of public necessity (e.g. safety)

DBE Replacement Steps

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DBE Replacement Steps

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1	16. If approved, RE (Contractor Administrator) should sign and date the replacement form
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18. Not Finished Yet – Next Step ... Good Faith Effort

If Applicable, Prime should complete BOWD (Business Opportunity and Workforce Development) Supportive Services Form

Unresolved Issues – Prime sends “Notice of Intent to Request Replacement/Termination” to DBE & copy RE

5-Day Notice Requirement (Allow 5 Business Days for DBE Response) Send by Certified Mail & Email

5-Day Response Period: DBE must advise the Prime and RE of reasons why it should not be replaced

5-Day Notice period begins on the next business day after written notice is provided to DBE Firm

For Disputed Responses, the Department will hold a meeting with the Prime and DBE Firm

After notice period, RE (Contract Administrator) will review all documentation to make a determination

Signature Line on Replacement Form: Firm’s failure to sign form does not suspend the replacement process

If approved, RE (Contract Administrator) should sign and date the replacement form

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Decertification Replacement

- ❖ ***Replacement Required:*** When a committed DBE is decertified prior to the Department receiving the SAF (*Subcontract Approval Form*) for the named DBE firm, the Contractor shall follow replacement process.
- ❖ ***Replacement NOT Required:*** When a committed DBE is decertified by the Department after the SAF (*Subcontract Approval Form*) has been received by the Department, the Contractor will not be required to follow replacement process.

SAMPLE 5-DAY NOTICE LETTER

PRIME LETTERHEAD

MONTH-DAY-YEAR

VIA EMAIL and CERTIFIED MAIL

DBE Name
ATTENTION: DBE Owner
1 South Wilmington Ave
Raleigh, NC 27601

SUBJECT: "C" Project Number / Project DESCRIPTION
NOTICE OF INTENT TO REQUEST REPLACEMENT

Dear DBE Owner:

Prime Contractor has absorbed unanticipated costs and delays due to the subcontractor not meeting its performance obligations. As you are aware, the Prime Contractor requires all work to be performed in accordance with the executed subcontract agreement, which includes but is not limited to, safety, workmanship (i.e. quality) and timeliness (i.e. schedule). Unfortunately, the DBE Firm has continuously failed to meet these obligations for this project. In recent weeks, these performance issues have not improved.

For these reasons, we have notified the Resident Engineer's Office of our intent to request to replace/terminate DBE Firm on the above-reference project. DBE Firm has five (5) business days to respond to this notification by signing the attached DBE/MBE/WBE replacement form or stating its objections to being replaced on this contract. Also, please note that the five-day response period ends on MONTH, DAY, YEAR at 5:00 PM.

Please feel free to contact me if you have questions.

Sincerely,

PRIME CONTRACTOR
Project Manager

ATTACHMENTS: Default Letters and Meeting Minutes (If Applicable)

Cc: Resident Engineer/Contract Administrator
FILE COPY

Closer Look at the POLICY Language and FORMS

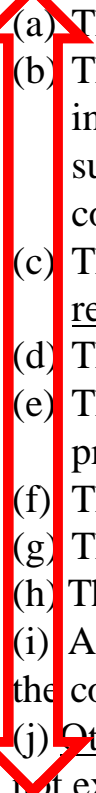


DBE REPLACEMENT POLICY IN SPECIAL PROVISION

When a Contractor has relied on a commitment to a DBE subcontractor (or an approved substitute DBE subcontractor) to meet all or part of a contract goal requirement, the contractor shall not terminate the DBE subcontractor for convenience. This includes, but is not limited to, instances in which the Contractor 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.

The Contractor must give notice in writing both **by certified mail and email** to the DBE subcontractor, with a copy to the Engineer of its intent to request to terminate and/or substitute, and the reason for the request. **The Contractor must give the DBE subcontractor five (5) business days to respond to the Contractor's Notice of Intent to Request Termination and/or Substitution.** If the DBE subcontractor objects to the intended termination/substitution, the DBE, within five (5) business days must advise the Contractor and the Department of the reasons why the action should not be approved. **The five-day notice period shall begin on the next business day after written notice** is provided to the DBE subcontractor.

A committed DBE subcontractor may only be terminated after receiving the Department's written approval based upon a finding of good cause for the proposed termination and/or substitution. For purposes of this section, **good cause** shall include the following circumstances: **LIST ADDED BELOW**

- 
- (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 on 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) The listed DBE subcontractor is not a responsible contractor; *[Is DBE CAPABLE or QUALFIED to perform work?]*
 - (g) The listed DBE voluntarily withdraws from the project and provides written notice of 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 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.

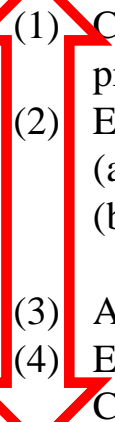
The Contractor shall comply with the following for replacement of a committed DBE:

(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. **[GFE required if Prime did not submit “ADDITONAL” DBEs at the time of BID]**

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

GFE DOCUMENTATION

- 
- (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 subbids 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 Contractor.

(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 Contractor 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 Contractor 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).

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 Contractor fails to follow this procedure, the Contractor may be disqualified from further bidding for a period of up to 6 months.

Changes in the Work**Article 104-5****Article 104-7**

When the **Engineer** makes changes that result in the reduction or elimination of work to be performed by a committed DBE, the Contractor 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 Contractor'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, which has more than a minimal impact on the contract amount, the Contractor 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 Contractor shall seek participation by DBEs unless otherwise approved by the Engineer.

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

Directory of Firms

<https://www.ebs.nc.gov/VendorDirectory/default.html>

The screenshot shows the NCDOT Vendor Directory website. A red box highlights the "Directory of Firms" link in the navigation menu, with a red arrow pointing to it. Another red arrow points to the "Firm Name" search field in the "Start Your Directory Search" section. The page content includes a description of the directory, a disclaimer, and a list of downloadable vendor listings.

Connect NCDOT BUSINESS PARTNER RESOURCES

Home Help Site Map

Doing Business Bidding & Letting Projects Resources Local Governments

Prequalify Small Business **Directory of Firms** Trucking Fleet & Material Management DMV Public Transportation Purchasing Turnpike FTZ

Directory of Firms
Complete listing of certified and prequalified firms.

Doing Business > Directory of Firms

What is the Directory of Firms?

The Directory of Firms is a real-time consolidated list of firms that have been certified through North Carolina's Unified Certification Program as Disadvantaged Business Enterprises (DBE), Airport Concession Disadvantaged Business Enterprises (ACDBE), Small Professional Services Firms (SPSF), Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and/or Small Business Enterprises (SBE).

The Directory also contains real-time information on firms that have been prequalified to perform work on and/or bid on NCDOT contracts. Prequalification is not a warranty or assurance that a firm is qualified or has the capacity to perform the type(s) of work the owner has represented it's firm as competent to perform. Prequalification by NCDOT does not relieve the prime contractor of his responsibility for determining if the subcontractors selected are, in fact, qualified to perform the work for which they are engaged.

The Directory is provided as an informational source for prime contractors, subcontractors, and consultants as well as local and federal agencies.

Disclaimer

ATTENTION

Please be advised that certification as a Disadvantaged Business Enterprise (DBE) with the North Carolina Department of Transportation is a separate and different certification than the North Carolina Department of Administration's Historically Underutilized Business (HUB) certification. Please check the contract proposal or advertisement to verify and confirm the funding source for the transportation project. This can be done by checking the type of minority goal(e) associated with the contract proposal. Projects with federal funds require that the proposal has a federal (DBE) goal and that the DBE goal is achieved by utilizing certified DBE firms found in the NCDOT Directory of Firms. For projects that have state funds only (no federal funds), the proposal will have two goals: Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE). These MBE and WBE goals are achieved by utilizing certified MBE and WBE firms, also found

Start Your Directory Search

Certified Firms

Prequalified Bidders, PO Prime Contractors, & Subcontractors

Prequalified Consultants

Firm Name

NCDOT Work Code

NAICS Code

Help

Download Vendor Listings

DBE Directory

SBE Directory

Prequalified Bidders, PO Prime Contractors, & Subcontractors

Prequalified Consultants

Contact Form
For questions & feedback about this area of Connect NCDOT, contact *Contractual Services*.

https://www.ebs.nc.gov/VendorDirectory/search.html?s=wc&a=new Directory of Firms | Connect...

Directory of Firms

Complete listing of certified and prequalified firms.

Doing Business > Directory of Firms > NCDOT Work Code

NCDOT Work Code

Start Your Search

A. * required field

Construction Work Code

Sort By Code Sort By Name

<input type="checkbox"/>	000050	HAULING (EXCEPT ASPHALT)
<input type="checkbox"/>	000055	HAULING (ASPHALT)
<input type="checkbox"/>	000060	ASPHALT/CONCRETE SAW CUTTING
<input type="checkbox"/>	000075	ROCK SLOPE STABILIZATION

▼ Click to show/hide additional search options

B.

Certification

<input type="checkbox"/>	Disadvantaged Business Enterprise (DBE)
<input type="checkbox"/>	Minority Business Enterprise (MBE)
<input type="checkbox"/>	Woman Business Enterprise (WBE)
<input type="checkbox"/>	Small Business Enterprise (SBE)

C.

Type of Firm

Start Your Directory Search

Certified Firms

Prequalified Bidders, PO Prime Contractors, & Subcontractors

Prequalified Consultants

Firm Name

NCDOT Work Code

NAICS Code

Help

Download Vendor Listings

DBE Directory ☒

SBE Directory ☒

Prequalified Bidders, PO Prime Contractors, & Subcontractors ☒

Prequalified Consultants ☒

Contact Form
For questions & feedback about this area of Connect NCDOT, contact *Contractual Services*.

Check Applicable
Work Codes

CHECK 3 Boxes:
DBE/MBE/WBE

https://www.ebs.nc.gov/VendorDirectory/search.html?s=wc&a=new

Directory of Firms | Connect...

B.

Certification

- ☐ Disadvantaged Business Enterprise (DBE)
- ☐ Minority Business Enterprise (MBE)
- ☐ Woman Business Enterprise (WBE)
- ☐ Small Business Enterprise (SBE)

C.

Type of Firm

- ☐ Other Professional Services
- ☐ Supply
- ☐ Mechanical, Electrical, Plumbing, and HVAC
- ☐ Road & Street Construction

D.

Desired Work Location Reset

Select Counties by NC Division

☐ 01 ☐ 02 ☐ 03 ☐ 04 ☐ 05 ☐ 06 ☐ 07 ☐ 08 ☐ 09 ☐ 10 ☐ 11 ☐ 12 ☐ 13 ☐ 14

Sort By County Sort By Division

<input type="checkbox"/> BERTIE	Division 01
<input type="checkbox"/> CAMDEN	Division 01
<input type="checkbox"/> CHOWAN	Division 01
<input type="checkbox"/> CURRITUCK	Division 01
<input type="checkbox"/> DARE	Division 01

Prequalified Bidders, PO Prime Contractors, & Subcontractors

Prequalified Consultants

Contact Form
For questions & feedback about this area of Connect NCDOT, contact *Contractual Services*.

Select the Division where work is to be performed

E.

Address Location

Reset

☐ Georgia ☐ South Carolina ☐ Tennessee ☐ Virginia

Select Counties by NC Division

☐ 01 ☐ 02 ☐ 03 ☐ 04 ☐ 05 ☐ 06 ☐ 07 ☐ 08 ☐ 09 ☐ 10 ☐ 11 ☐ 12 ☐ 13 ☐ 14

Sort By County

Sort By Division

<input type="checkbox"/> BERTIE	Division 01
<input type="checkbox"/> CAMDEN	Division 01
<input type="checkbox"/> CHOWAN	Division 01
<input type="checkbox"/> CURRITUCK	Division 01

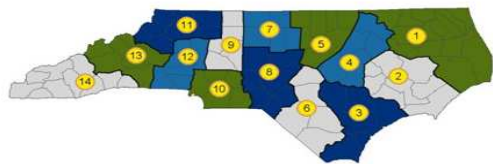
Submit Search

View My Selections

View All Options

Reset

Click a highway
division in the state
map to view the
counties in that
division.



Connect Home

Employee Directory

ncdot.gov



N.C. DEPARTMENT OF TRANSPORTATION

Office of Civil Rights

Business Opportunity & Workforce Development (BOWD)

Project #

SUPPORTIVE SERVICES FIELD FORM

FIRM NAME:

PRIMARY CONTACT:

PHYSICAL ADDRESS:

CITY: STATE: ZIP CODE:

PHONE: FAX: EMAIL:

TYPE OF BUSINESS (Certifications): DBE ☐ MBE ☐ WBE ☐

TYPES OF WORK PERFORMED:

OF FULL-TIME EMPLOYEES: # OF PART-TIME EMPLOYEES:

REFERRED BY: TITLE: EMAIL:

PHONE: REASON FOR REFERRAL:

PROGRAM ASSISTANCE NEEDS:

Please check the types of assistance you believe the firm needs to receive from the list below:

- | | |
|---|--|
| <input type="checkbox"/> Record Keeping | <input type="checkbox"/> Contract Compliance |
| <input type="checkbox"/> Financial Management | <input type="checkbox"/> How to Read Specs, Plans & RFPs |
| <input type="checkbox"/> Access to Capital/Funding | <input type="checkbox"/> Project Scheduling |
| <input type="checkbox"/> Equipment Needs | <input type="checkbox"/> Marketing & Public Relations |
| <input type="checkbox"/> Bonding, Financing & Insurance | <input type="checkbox"/> Human Resources |
| <input type="checkbox"/> Strategic Planning | <input type="checkbox"/> Operational Management |
| <input type="checkbox"/> Management Training | <input type="checkbox"/> Legal |
| <input type="checkbox"/> Workforce Needs | <input type="checkbox"/> Business Plan Development |
| <input type="checkbox"/> DBE Certification | <input type="checkbox"/> Employment Law/Labor Requirements |
| <input type="checkbox"/> Proposal Development | <input type="checkbox"/> CUF Review |
| <input type="checkbox"/> Bidding & Estimating | <input type="checkbox"/> Other: <input type="text"/> |

Recruit, Train, Retain and Grow

Mailing Address:

NC DEPARTMENT OF TRANSPORTATION
OFFICE OF CIVIL RIGHTS
BUSINESS OPPORTUNITY WORKFORCE DEVELOPMENT
1511 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1511

Christy Thaxton
Business Opportunity and Workforce Development
Office of Civil Rights (OCR)

T: (800) 522-0453 • F: (919) 508-1818
bowd@ncdot.gov
www.ncdot.gov



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

DBE MBE WBE REPLACEMENT REQUEST FORM ☐ PARTIAL ☒ FULL

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: _____

Replacement NON-DBE Firm: _____

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 business 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 Construction Engineer
State Contractor Utilization Engineer



STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

DBE MBE WBE REPLACEMENT REQUEST FORM

☐ PARTIAL ☒ FULL

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).

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Explanation for Replacement: _____

Subcontract Amount: _____

Amount of Subcontract Remaining: _____

Line Items: _____

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Replacement DBE/MBE/WBE: _____

Replacement NON-DBE Firm: _____

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 business 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 Construction Engineer
State Contractor Utilization Engineer**

FORM INSTRUCTIONS

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

IN ADDITION TO SUBMITTING THIS FORM, THE CONTRACT ADMINISTRATOR MUST ENSURE THAT THE STEPS BELOW ARE FOLLOWED:

1. Prior to starting the replacement process, the 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. The Contract Administrator will notify the Construction Unit to determine whether the DBE/MBE/WBE firm would benefit from supportive services provided by the Business Opportunity and Workforce Development Unit in the Office of Civil Rights. (Link to [BOWDSupportiveServicesFieldForm](#))
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 Construction Unit to begin the replacement process. The Construction Unit will coordinate with other sections, to include the State Contractor Utilization Engineer, 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 and/or substitution of a DBE, the Contractor shall give written notice by certified mail and email of the proposal, including the reason(s) for termination and/or substitution, to the DBE/MBE/WBE with a copy to the Engineer. The DBE/MBE/WBE shall be given five (5) business days to respond unless it is reduced by public necessity (e.g. safety). The five-day notice period shall begin on the next business day after written notice is provided to the DBE subcontractor. Upon receipt, the Construction Unit will email a copy of the Notice of Intent to Request Termination and/or Substitution to the State Contractor Utilization Engineer and other units to include DBE@ncdot.gov, BOWD@ncdot.gov, and TitleVI@ncdot.gov.
4. After the notice period the Contract Administrator will ensure that the Contractor has submitted all supporting documentation for the 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. Upon receipt of a disputed response from the DBE subcontractor, the Department will conduct a meeting with the Contractor and DBE subcontractor before making a final determination regarding the replacement.
6. If the Contractor is given approval by the Contract Administrator to replace a DBE/MBE/WBE subcontractor, the Contractor will submit all documentation of a Good Faith Effort (phone logs, emails, and any other documentation) to the Contract Administrator. The Contract Administrator will coordinate with the Construction Unit to review the documentation. The Construction Unit will coordinate with other sections, to include the State Contractor Utilization Engineer, as appropriate. The Contractor must make a Good Faith Effort to replace a DBE, MBE or WBE with the same certification type based on funding source. 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.
7. Signature lines on form: The form should contain the signature of the original DBE/MBE/WBE subcontractor being replaced. However, if this is not possible (e.g., the DBE/MBE/WBE does not sign the form), 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 subcontractor.
8. A file copy of the replacement documentation and completed form should be sent to the State Construction Engineer and State Contractor Utilization Engineer in the Office of Civil Rights.

Contact Construction Unit & Document Issues

Replacement is for Good Cause

5-Day Notice to DBE (Email & Certified Mail)

Engineer reviews Documentation

Meeting Required for Contested Responses

Good Faith Effort (GFE) Process

Signatures on Replacement Form

Send to Construction Unit (Area Const Engineer)

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

IN ADDITION TO SUBMITTING THIS FORM, THE CONTRACT ADMINISTRATOR MUST ENSURE THAT THE STEPS BELOW ARE FOLLOWED:

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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 Construction Unit to begin the replacement process. The Construction Unit will coordinate with other sections, to include the State Contractor Utilization Engineer, 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 and/or substitution of a DBE, the Contractor shall give written notice by certified mail and email of the proposal, including the reason(s) for termination and/or substitution, to the DBE/MBE/WBE with a copy to the Engineer. The DBE/MBE/WBE shall be given five (5) business days to respond unless it is reduced by public necessity (e.g. safety). The five-day notice period shall begin on the next business day after written notice is provided to the DBE subcontractor. Upon receipt, the Construction Unit will email a copy of the Notice of Intent to Request Termination and/or Substitution to the State Contractor Utilization Engineer and other units to include DBE@ncdot.gov, BOWD@ncdot.gov, and TitleVI@ncdot.gov.
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7. Signature lines on form: The form should contain the signature of the original DBE/MBE/WBE subcontractor being replaced. However, if this is not possible (e.g., the DBE/MBE/WBE does not sign the form), 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 subcontractor.
8. A file copy of the replacement documentation and completed form should be sent to the State Construction Engineer and State Contractor Utilization Engineer in the Office of Civil Rights.

Wrap-Up: KEY POINTS



Changes in the Work

- ❖ The DBE/MBE/WBE subcontractor is required to perform the contract quantities indicated for each committed line item(s). When a DBE subcontractor is awarded the entire plan quantity they are required to complete all work for this line item including overruns. **The DBE shall participate in the additional work to the same extent as the DBE participated in the original contract work.**
- ❖ Additional Work under Article 104-5 (Existing Line Items of Work)
- ❖ Extra Work under Article 104-7 (NEW Line Items of Work)
- ❖ Reductions in Work:
 - ❖ Engineer Changes (Participation Shortfall Make-up NOT Required)
 - ❖ Contractor Changes (Participation Shortfall Make-up Required)

DBE Replacement Policy Updates

UPDATES: Effective January 2019 Letting Date

- ❖ Added “Business” Days (not Calendar Days) for 5-Day Notice
- ❖ Added Method of Delivery Requirement: “Certified Mail” and “Email”
- ❖ Added “Partial” DBE Replacement Language: Policy/Form/Instructions
- ❖ Added List of “Good Causes” to DBE Replacement Section
- ❖ Added “Meeting” Requirement (Disputed Removal Responses)
- ❖ Added Line on Form to List “NON-DBE” Replacement Firm
- ❖ Added Link for “BOWD Supportive Services Form” (Office of Civil Rights)
- ❖ Updated Procedures in NCDOT Construction Manual

DBE Replacement Policy Reminders

REMINDERS:

- ❖ 5-Day “Notice of Intent to Replace/Terminate” Letter
- ❖ Written Documentation of Performance Issues
- ❖ Good Faith Effort Requirements (Directory of Firms)
- ❖ Decertified DBE Firms (Recent Firms: Stay Alert Safety; Curtin Trucking)
 - ❖ Decertified Before NCDOT receives SAF – DBE Replacement Process Required
 - ❖ Decertified After NCDOT receives SAF – DBE Replacement Process NOT Required
- ❖ Partial DBE Replacements (in lieu of full replacements)

Contract Administration Checklist

- ❖ Contract Administrators (RE/District Engineer) are responsible for **ALL contract issues**
- ❖ Construction Unit serves as the **Help Desk** to assist with Contract Administration
- ❖ **Area Construction Engineers** should be the primary contact person for all issues
- ❖ Construction Unit is also responsible for **tracking and monitoring** specific federal compliance programs (e.g. prompt payments, DBE replacements / compliance, Davis Bacon wage violations, etc.)
- ❖ **Correspondence Folders in SharePoint:** Upload all project-related documents
- ❖ Contractual Matters: **Subcontractors work directly for the Primes not NCDOT**

Quiz

1. Who is the Contract Administrator's first point of contact for contract issues/questions?
2. When the DBE completes 100% of the Subcontracted work, can the Prime replace them without GOOD CAUSE?
3. Is the 5-Day Notice of Intent to Request a Replacement based on **BUSINESS** or **CALENDAR** Days?
4. Are both Methods of Delivery (**CERTIFIED MAIL** and **EMAIL**) Required for the 5-Day Notice Letter?
5. When does the 5-Day Notice Period begin? Date the letter is sent **OR** the Next Business Day
6. Does the Replacement Process apply to all DBE subcontractors (**COMMITTED and Non-Committed**)?
7. Is a Meeting required for **CONTESTED** DBE Replacement Removals?
8. Is a 5-Day Notice Required for VOLUNTARY and DECERTIFIED DBE Replacements?
9. If a DBE is decertified **AFTER** the Department receives the SAF, is the Replacement Process required?
10. The DBE shall participate in the ADDITIONAL work to the same extent as the DBE participated in the ORIGINAL contract work. True **OR** False

B. C. Skeens, PE (Brian)
Assistant State Construction Engineer
(Western Region - Divisions 7, 9 - 14)
3931 NC 226 S
Marion, NC 27852
Cell: 828-803-1461

A. C. Cochran, PE (Cameron)
Regional Bridge Construction Engineer
(Western Region - Divisions 7, 9 - 14)
253 Webster Road
Sylva, NC 28779
Cell: 828-777-2690

Construction Unit Region And Area Engineers

W. W. Jones III, PE (Wiley)
Assistant State Construction Engineer
(Eastern Region - Divisions 1 - 6, and 8)
1543 Mail Service Center
Raleigh, NC 27699-1543
Office: 919-707-2403
Cell: 919-880-1753

A. V. Earwood, PE (Aaron)
Regional Bridge Construction Engineer
(Eastern Region - Divisions 1 - 6, and 8)
1543 Mail Service Center
Raleigh, NC 27699-1543
Cell: 919-730-5138
Office: 919-707-7413

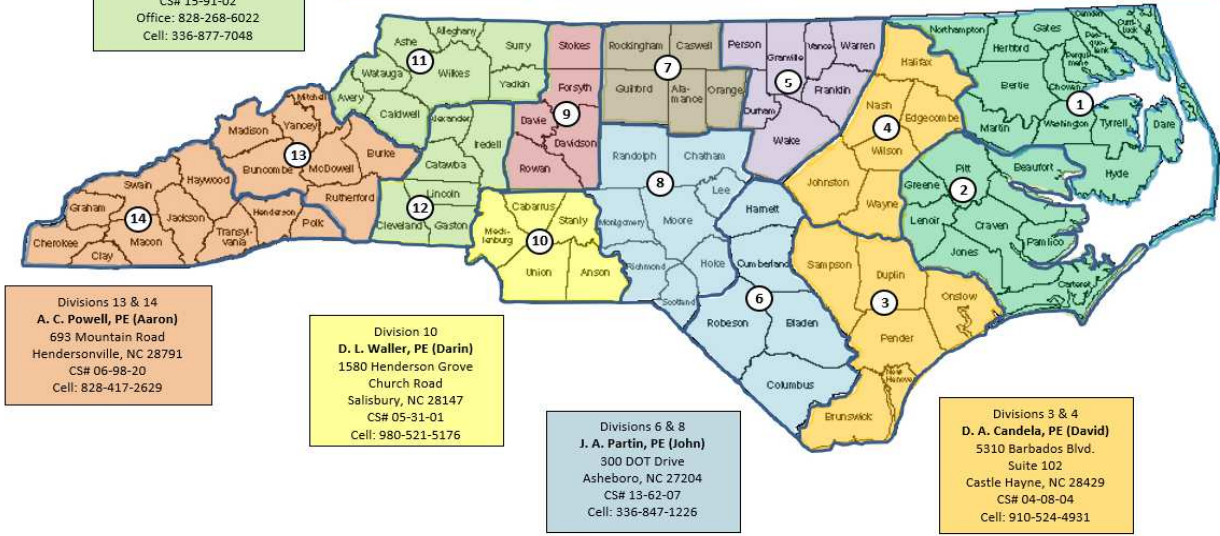
Divisions 11 & 12
D. W. Eller (Doug)
P.O. Box 1460
Boone, NC 28607
CS# 15-91-02
Office: 828-268-6022
Cell: 336-877-7048

Division 9
V. G. Davis, PE (Vickie)
1580 Henderson Grove
Church Road
Salisbury, NC 28147
CS# 05-31-01
Cell: 704-202-0945

Division 7
A. E. Griffith, PE (Aaron)
121-E Shields Park Drive
Kernersville, NC 27284
CS# 02-16-44
Cell: 336-215-9170

Division 5
T. B. Brooks, PE (Troy)
1543 Mail Service Center
Raleigh, NC 27699-1543
Office: 919-707-2420
Cell: 336-972-4627

Divisions 1 & 2
R. S. Hall, PE (Randy)
209 South Glenburnie Road
New Bern, NC 28560
CS# 16-00-04
Cell: 252-402-9957
Office: 252-514-4759



Construction Unit Upcoming Webinars

ccu@ncdot.gov

<u>3/28/2019</u> , Thursday	1:30 PM	Pay Records Pilot	https://meet.lync.com/ncconnect-ncdot/nroskam/2M5Q4F9D
<u>4/4/2019</u> , Thursday	10 AM	Pay Records Pilot	https://meet.lync.com/ncconnect-ncdot/nroskam/D7Q3G17G
<u>4/10/2019</u> , Wednesday	10 AM	Project Closeouts	https://meet.lync.com/ncconnect-ncdot/nroskam/V21T5DH6
<u>4/18/2019</u> , Thursday	1:30 PM	Project Closeouts	https://meet.lync.com/ncconnect-ncdot/nroskam/59TQ6J1J

Questions??

Delacy Bradsher

dvbradsher@ncdot.gov

704-301-5659

To get copy of forms:

<https://connect.ncdot.gov/projects/construction/Pages/Pavement-Construction.aspx>

Presentation will be posted:

<https://connect.ncdot.gov/projects/construction/Pages/Construction-Meetings-Events.aspx>