



NCDOT DBE Open-Ended Performance Plan (OEPP) Guidelines for Design-Build Projects

Overview

In design-build contracting, the Department will set a DBE goal that a proposer must show how it plans to meet the goal when submitting a DBE Open-Ended Performance Plan (OEPP) with its technical proposal.

To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed during the life of the project and annual participation target by contract year. The OEPP must also include proposed DBE Outreach efforts. A statement must be provided by the proposer agreeing to take all reasonable steps to follow the DBE Open-Ended Performance Plan and meet the DBE requirements as stated in the proposal.

Once the design-build contract is awarded, the Department will provide ongoing monitoring and oversight to evaluate whether the Design-Build Team is using good faith efforts to comply with the OEPP and schedule. The Department and the Design-Build Team may agree to make written revisions of the OEPP throughout the life of the project, *e.g.*, replacing the type of work items the Design-Build Team will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the Design-Build Team continues to use good faith efforts to meet the goal.

Pre-Award Submittal Requirements

Design-Build projects shall utilize a DBE Open-Ended Performance Plan (OEPP). The OEPP submitted by all teams must include a commitment to meet the DBE goal listed in the contract proposal and a detailed plan for ongoing DBE solicitation and outreach efforts.

The DBE Open-Ended Performance Plan must be submitted with the Technical Proposal during the design-build procurement process by all proposers. No DBE firms will be submitted at the time of bid. To be considered responsive, the OEPP must contain the minimum requirements:

A. Commitment to Meet the DBE Contract Goal

Description of Minimum Requirement:

- ✓ The proposer shall provide a summary of all steps that will be taken to ensure that the advertised DBE goal is met.
- ✓ The proposer shall describe the Good Faith Efforts (GFE) it will take to secure DBE subcontractors to perform the scopes of work.
- ✓ The proposer shall provide a plan for ensuring all DBEs utilized will perform a commercially useful function (CUF).
- ✓ The proposer shall provide a plan for ensuring subcontractors are paid in accordance with NCDOT's prompt payment specification.

B. Forecast for DBE utilization throughout the life of the project to meet the advertised DBE contract goal during the life of the project.

Description of Minimum Requirement:

- ✓ The proposer shall provide all anticipated DBE opportunities that will be used to meet the advertised DBE goal. The DBE opportunities shall include the NCDOT work code and work scope.
- ✓ The proposer shall provide the anticipated value of work that will be assigned to each work scope listed.
- ✓ The proposer shall provide anticipated payout for each work scope by each calendar year that the contract will be active. The total for each calendar year shall equal the anticipated value of work.
- ✓ The proposer shall provide the anticipated date of the execution of the DBE subcontract. The date should correspond to the quarter/year that the commitment will be secured.
- ✓ The anticipated participation target should be broken down by each calendar year of construction.

C. Proposed DBE Outreach Efforts

Description of Minimum Requirement:

- ✓ The proposer shall provide its methodology for documenting and ensuring that DBE subcontractors will be procured to meet the advertised DBE goal. A description of the means of solicitation shall be provided.
- ✓ The proposer shall provide a description of how potential DBE firms for each work scope are identified using the most current NCDOT Directory of Firms.
- ✓ The proposer shall provide any other means of outreach it may use to facilitate DBE participation on the project.
- ✓ The proposer may include past and any ongoing efforts as additional information to show potential good faith efforts that will be used on the project.
- ✓ The proposer shall provide Nondiscrimination, Affirmative Action, and EEO policies.

D. Statement provided by the proposer agreeing to take all reasonable steps to follow the DBE Performance Plan and meet the DBE requirements as stated in the proposal.

Description of Minimum Requirement:

- ✓ The proposer shall provide a statement that they will abide by the proposed OEPP and take all reasonable steps to ensure the proposed DBE goal will be met.
- ✓ The proposer shall agree to negotiate and contract in good faith with all DBEs and ensure compliance with all federal and state regulations, and NCDOT policies and guidelines.
- ✓ The Design-Build Team shall monitor the DBE participation throughout the life of the project.

The OEPP is considered Pass/Fail. If a bidder fails to meet the requirements, they will be considered nonresponsive. The DBE Open-Ended Performance Plan that was included with the technical proposal will be included in the executed contract and will become a contractual obligation. The Design-Build Team will be required to adhere to all aspects of the OEPP unless otherwise approved by the Engineer. The Department will provide monitoring of goal attainment throughout the life of the project.

Construction Phase – Proposed OEPP

Within thirty (30) days of construction, the Design-Build Team shall submit an OEPP Monitoring Spreadsheet that is consistent with the OEPP included in the contract. The OEPP Monitoring Spreadsheet, which will be provided by NCDOT, will include the following sheets:

- OEPP Contract – NCDOT will include a pdf copy of the OEPP that was included in the executed contract.
- OEPP Proposed Utilization – The Design-Build Team shall include all scopes of work that are anticipated to be used to meet the DBE contract goal. The types of subcontracting opportunities, specific scopes of work, commitment that will be provided to the DBE, anticipated commitment date, and breakdown of anticipated participation by contract year shall be provided. This information shall be consistent with the OEPP that was included in the contract.
- OEPP Commitments – The Design-Build Team shall update the OEPP Monitoring Spreadsheet as committed DBE subcontractors are selected for scopes of work. The committed DBE subcontractors' value of work will be monitored by calendar year throughout the life of the project until the work has been completed.
- Modification History – A tracking of changes throughout the life of the project. Tracking can include commitments, approved changes to the OEPP, or any modification request(s) made by the Design-Build Team.

In addition to the OEPP Monitoring Spreadsheet, the Design-Build Team shall submit the following information:

- Identify the Point of Contact (POC) for the OEPP. This will be the primary contact for the Design-Build Team for ensuring DBE compliance for the contract. The POC shall be knowledgeable about the Design-Build Team's good faith efforts in meeting the DBE goal, the Design-Build Team's overall schedule of work for DBEs, the Design-Build Team's solicitation of DBE subcontractors, and the team's nondiscrimination, affirmative action, and EEO policies. The POC shall attend all monthly OEPP meetings and monthly project construction meetings.

Each quarter, the Design-Build Team's Point of Contact and the decision makers shall meet with the Engineer to discuss progress on the project, upcoming DBE work, review the OEPP Monitoring spreadsheet to ensure that DBE subcontracting opportunities are on track, discuss good faith efforts, commitments and any other topics relative to the OEPP. An updated OEPP Monitoring plan should be provided by the Design-Build Team quarterly, or as needed, reflecting any approved changes and any payments made to DBE subcontractors. The payments made to DBE subcontractors shall be reported monthly in the NCDOT Subcontractor Payment Tracking System in addition to reporting on the OEPP Monitoring Plan.

Changes to the Proposed OEPP

The OEPP may only be modified upon approval of the Engineer. A change to the OEPP can be any of the following, but not limited to:

- ✓ Change of work scope identified in the OEPP.
- ✓ Securing a commitment for a work scope.
- ✓ Any alteration of work to a committed subcontractor. This would include both changes in the reduction of line-item work or a change to the scope of work.
- ✓ Any other change to the OEPP.

When the Design-Build Team has secured a committed DBE subcontractor to perform a scope of work identified in the OEPP, a Letter of Intent (LOI) and Subcontract Approval Form (SAF) must be submitted to the Engineer. These documents will be reviewed to ensure conformance with the OEPP. If the Letter of Intent is approved, then the OEPP Monitoring Plan must be updated to reflect a new commitment with the target participation throughout the life of the project provided. This will be used by the Engineer and the Design-Build Team to monitor the progress of each commitment throughout the life of the project.

If the Design-Build Team is unable to secure a DBE subcontractor to perform a scope of work identified in the OEPP, the Design-Build Team must provide a good faith effort as outlined in the contract special provisions that includes, but not limited to, the following:

- ✓ Documentation of Design-Build Team's written solicitations, to include adequate description of the work, to DBE firms.
- ✓ Documentation of any telephone calls made to solicit DBE firms to perform the scope of work.
- ✓ Documentation that the current NCDOT Directory of Firms was used for solicitation.
- ✓ All written quotes and emails received from DBE firms willing to perform the scope of work.
- ✓ Quote comparison with all quotes received with comments to explain decisions made during procurement of the subcontractor.
- ✓ Any other back-up documentation critical to the subcontractor decision making process
- ✓ New scope of work that will be used to replace the scope of work in which the DBE was unable to be procured.
- ✓ Documentation of any efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance as required by the Design-Build Team.
- ✓ Contact the Business Opportunity and Work Force Development Unit at BOWD@ncdot.gov for assistance with soliciting DBE quotes for the various scopes of work.

The Engineer will review all information provided and will provide a finding or rejection of good faith within ten (10) business days. If the Design-Build Team failed to make a good faith effort, the original scope of work will be required to have a DBE commitment. If the good faith effort is approved, the Design-Build Team will need to update the OEPP Monitoring Plan with the new scope of work.

Any changes to the commitments previously approved in the OEPP Monitoring Plan will require a DBE Replacement as detailed in the contract special provisions.

Failure to meet DBE Goals

A written justification with supporting documentation shall be submitted to the State Construction Engineer if the DBE goal is not achieved at the project conclusion. Failure to meet contract requirements in accordance with Subarticle 102-15(J) of the *Standard Specifications* may be cause to disqualify the Prime Contractor or any affiliated companies within the Design-Build Team from further bidding.