

## **MINORITY BUSINESS ENTERPRISE AND WOMEN BUSINESS ENTERPRISE:**

(10-16-07)(Rev 11-15-11)

RG67

### **Description**

The purpose of this Special Provision is to carry out the North Carolina Department of Transportation's policy of ensuring nondiscrimination in the award and administration of contracts financed in whole or in part with State funds.

### **Definitions**

*Additional MBE/WBE Subcontractors* - Any MBE/WBE submitted at the time of bid that will not be used to meet either the MBE or WBE goal. No submittal of a Letter of Intent is required, unless the additional participation is used for banking purposes.

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

*Contract Goals Requirement* - The approved MBE and WBE participation at time of award, but not greater than the advertised contract goals for each.

*Goal Confirmation Letter* - Written documentation from the Department to the bidder confirming the Contractor's approved, committed MBE and WBE participation along with a listing of the committed MBE and WBE firms.

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

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

*Minority Business Enterprise (MBE)* - A firm certified as a Disadvantaged Minority-Owned Business Enterprise through the North Carolina Unified Certification Program.

*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 MBE/WBE certification.

The MBE/WBE program follows the same regulations as the federal Disadvantaged Business Enterprise (DBE) program in accordance with 49 CFR Part 26.

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

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

*Women Business Enterprise (WBE)* - A firm certified as a Disadvantaged Women-Owned Business Enterprise through the North Carolina Unified Certification Program.

### **Forms and Websites Referenced in this Provision**

*Payment Tracking System* - On-line system in which the Contractor enters the payments made to MBE and WBE subcontractors who have performed work on the project.  
<https://apps.dot.state.nc.us/Vendor/PaymentTracking/>

*DBE-IS Subcontractor Payment Information* - Form for reporting the payments made to all MBE/WBE firms working on the project. This form is for paper bid projects only.  
<http://www.ncdot.org/doh/forms/files/DBE-IS.xls>

*RF-1 MBE/WBE Replacement Request Form* - Form for replacing a committed MBE or WBE.  
[https://apps.dot.state.nc.us/\\_includes/download/external.html?pdf=http%3A//www.ncdot.gov/doh/forms/files/RF-1.pdf](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](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](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 MBE/WBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed MBE/WBE for the amount listed at the time of bid.  
<http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>

*Listing of MBE and WBE Subcontractors Form* - Form for entering MBE/WBE subcontractors on a project that will meet this MBE and WBE goals. This form is for paper bids only.  
<http://www.ncdot.gov/doh/preconstruct/ps/word/MISC3.doc>

*Subcontractor Quote Comparison Sheet* - Spreadsheet for showing all subcontractor quotes in the work areas where MBEs and WBEs 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](http://www.ncdot.gov/business/ocs/goodfaith/excel/Ex_Subcontractor_Quote_Comparison.xls)

### **MBE and WBE Goal**

The following goals for participation by Minority Business Enterprises and Women Business Enterprises are established for this contract:

(A) Minority Business Enterprises [**number to the nearest tenth**] %

- (1) *If the MBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that MBEs participate in at least the percent of the contract as set forth above as the MBE goal.
- (2) *If the MBE goal is zero*, the Contractor shall make an effort to recruit and use MBEs during the performance of the contract. Any MBE participation obtained shall be reported to the Department.

(B) Women Business Enterprises [**number to the nearest tenth**] %

- (1) *If the WBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that WBEs participate in at least the percent of the contract as set forth above as the WBE goal.
- (2) *If the WBE goal is zero*, the Contractor shall make an effort to recruit and use WBEs during the performance of the contract. Any WBE participation obtained shall be reported to the Department.

### **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 MBE and WBE certified shall be used to meet the MBE and WBE goals respectively. 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 MBE/WBE Subcontractors**

At the time of bid, bidders shall submit all MBE and WBE participation that they anticipate to use during the life of the contract. Only those identified to meet the MBE goal and the WBE goal will be considered committed, even though the listing shall include both committed

MBE/WBE subcontractors and additional MBE/WBE subcontractors. Any additional MBE/WBE subcontractor participation above the goal for which letters of intent are received will follow the banking guidelines found elsewhere in this provision. All other additional MBE/WBE subcontractor participation submitted at the time of bid will be used toward the Department's overall race-neutral goals. Only those firms with current MBE and WBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of MBE and WBE participation. The Contractor shall indicate the following required information:

(A) Electronic Bids

Bidders shall submit a listing of MBE and WBE participation in the appropriate section of Expedite, the bidding software of Bid Express<sup>®</sup>.

- (1) Submit the names and addresses of MBE and WBE firms identified to participate in the contract. If the bidder uses the updated listing of MBE and WBE firms shown in Expedite, the bidder may use the dropdown menu to access the name and address of the firms.
- (2) Submit the contract line numbers of work to be performed by each MBE and WBE firm. When no figures or firms are entered, the bidder will be considered to have no MBE or WBE participation.
- (3) The bidder shall be responsible for ensuring that the MBE and WBE are certified at the time of bid by checking the Directory of Transportation Firms. If the firm is not certified at the time of the bid-letting, that MBE's or WBE's participation will not count towards achieving either the MBE or WBE goal.

(B) Paper Bids

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

- (1) *If either the MBE or WBE goal is more than zero,*
  - (a) Bidders, at the time the bid proposal is submitted, shall submit a listing of MBE/WBE participation, including the names and addresses on *Listing of MBE and WBE Subcontractors* contained elsewhere in the contract documents in order for the bid to be considered responsive. Bidders shall indicate the total dollar value of the MBE and WBE participation for the contract.
  - (b) If bidders have no MBE or WBE participation, they shall indicate this on the *Listing of MBE and WBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety.

- (c) The bidder shall be responsible for ensuring that the MBE/WBE 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 bid-letting, that MBE's or WBE's participation will not count towards achieving the corresponding goal.
- (2) *If either the MBE or WBE goal is zero*, bidders, at the time the bid proposal is submitted, shall enter the word "None"; or the number "0"; or if there is participation, add the value on the *Listing of MBE and WBE Subcontractors* contained elsewhere in the contract documents.

### **MBE or WBE Prime Contractor**

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

For example, on a proposed contract, the WBE goal is 10%, and the MBE goal is 8%. A WBE bidder puts in a bid where they will perform 40% of the contract work and have a WBE subcontractor which will perform another 5% of the work. Together the two WBE firms submit on the *Listing of MBE and WBE Subcontractors* a value of 45% of the contract which fulfills the WBE goal. The 8% MBE goal shall be obtained through MBE participation with MBE certified subcontractors or documented through a good faith effort. It should be noted that you cannot combine the two goals to meet an overall value. The two goals shall remain separate.

MBE/WBE prime contractors shall also follow Sections A and B listed under *Listing of MBE and WBE Subcontractor* just as a non-MBE/WBE bidder would.

### **Written Documentation – Letter of Intent**

The bidder shall submit written documentation for each MBE/WBE that will be used to meet the MBE and WBE goals of the contract, indicating the bidder's commitment to use the MBE/WBE 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 bids, 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 bidder fails to submit the Letter of Intent from each committed MBE and WBE to be used toward the MBE and WBE goals, or if the form is incomplete (i.e. both signatures are not present), the MBE/WBE participation will not count toward meeting the MBE/WBE goal. If the lack of this participation drops the commitment below either the MBE or WBE goal, the Contractor shall submit evidence of good faith efforts for the goal not met, 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 bids, 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 bidder fails to meet or exceed either the MBE or the WBE goal the apparent lowest responsive bidder shall submit to the Department documentation of adequate good faith efforts made to reach that specific goal(s).

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 bids unless the sixth day falls on an official state holiday. In that situation, it would be due in the office of the State Contractor Utilization Engineer the next official state business day. If the contractor cannot send the information electronically, then one complete set and 9 copies of this information shall be received under the same time constraints above.

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 MBE/WBE 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 MBE/WBE Goals More Than Zero**

Adequate good faith efforts mean that the bidder took all necessary and reasonable steps to achieve the goal which, by their scope, intensity, and appropriateness, could reasonably be expected to obtain sufficient MBE/WBE participation. Adequate good faith efforts also mean that the bidder actively and aggressively sought MBE/WBE 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 bidder has made. Listed below are examples of the types of actions a bidder will take in making a good faith effort to meet the goals and are not intended to be exclusive or exhaustive, nor is it 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 MBEs/WBEs who have the capability to

perform the work of the contract. The bidder must solicit this interest within at least 10 days prior to bid opening to allow the MBEs/WBEs to respond to the solicitation. Solicitation shall provide the opportunity to MBEs/WBEs within the Division and surrounding Divisions where the project is located. The bidder must determine with certainty if the MBEs/WBEs are interested by taking appropriate steps to follow up initial solicitations.

- (B) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the MBE and WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- (C) Providing interested MBEs/WBEs 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 MBEs/WBEs. It is the bidder's responsibility to make a portion of the work available to MBE/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE subcontractors and suppliers, so as to facilitate MBE/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of MBEs/WBEs 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 MBEs/WBEs to perform the work.
  - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE/WBE 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 MBEs/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract MBE or WBE goals, 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. Bidding contractors are not, however, required to accept higher quotes from MBEs/WBEs if the price difference is excessive or unreasonable.
- (E) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder's standing within its industry, membership in specific groups, organizations, or associates and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the project goal.

- (F) Making efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or bidder.
- (G) Making efforts to assist interested MBEs/WBEs 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 MBEs/WBEs. Contact within 7 days from the bid opening the Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the bidder's inability to get MBE or WBE quotes.
- (I) Any other evidence that the bidder submits which shows that the bidder has made reasonable good faith efforts to meet the MBE and WBE goal.

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

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

If the Department does not award the contract to the apparent lowest responsive bidder, the Department reserves the right to award the contract to the next lowest responsive bidder that can satisfy to the Department that the MBE and WBE goals can be met or that an adequate good faith effort has been made to meet the MBE and WBE goals.

### **Non-Good Faith Appeal**

The State Contractor Utilization Engineer will notify the contractor verbally and in writing of non-good faith. A contractor may appeal a determination of non-good faith made by the Goal Compliance Committee. If a contractor 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 MBE/WBE Participation Toward Meeting MBE/WBE Goals

### (A) Participation

The total dollar value of the participation by a committed MBE/WBE will be counted toward the contract goal requirements. The total dollar value of participation by a committed MBE/WBE will be based upon the value of work actually performed by the MBE/WBE and the actual payments to MBE/WBE firms by the Contractor.

### (B) Joint Checks

Prior notification of joint check use shall be required when counting MBE/WBE 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 MBE/WBE may enter into subcontracts. Work that a MBE subcontracts to another MBE firm may be counted toward the MBE contract goal requirement. The same holds for work that a WBE subcontracts to another WBE firm. Work that a MBE subcontracts to a non-MBE firm does not count toward the MBE contract goal requirement. Again, the same holds true for the work that a WBE subcontracts to a non-WBE firm. If a MBE or WBE 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 MBE or WBE is not performing a commercially useful function. The MBE/WBE may present evidence to rebut this presumption to the Department. The Department's decision on the rebuttal of this presumption may be subject to review by the Office of Inspector General, NCDOT.

### (D) Joint Venture

When a MBE or WBE performs as a participant in a joint venture, the Contractor may count toward its contract goal requirement a portion of the total value of participation with the MBE or WBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the MBE or WBE performs with its forces.

### (E) Suppliers

A contractor may count toward its MBE or WBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a MBE or WBE regular dealer and 100 percent of such expenditures from a MBE or WBE manufacturer.

(F) **Manufacturers and Regular Dealers**

A contractor may count toward its MBE or WBE requirement the following expenditures to MBE/WBE firms that are not manufacturers or regular dealers:

- (1) The fees or commissions charged by a MBE/WBE firm for providing a *bona fide* service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, provided the fees or commissions are determined to be reasonable and not excessive as compared with fees and commissions customarily allowed for similar services.
- (2) With respect to materials or supplies purchased from a MBE/WBE, which 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 job site (but not the cost of the materials and supplies themselves), provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

**Commercially Useful Function**

(A) **MBE/WBE Utilization**

The Contractor may count toward its contract goal requirement only expenditures to MBEs and WBEs that perform a commercially useful function in the work of a contract. A MBE/WBE 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 MBE/WBE 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 MBE/WBE 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 MBE/WBE credit claimed for its performance of the work, and any other relevant factors.

(B) **MBE/WBE Utilization in Trucking**

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

- (1) The MBE/WBE 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 the MBE or WBE goal.

- (2) The MBE/WBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- (3) The MBE/WBE 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 MBE may subcontract the work to another MBE firm, including an owner-operator who is certified as a MBE. The same holds true that a WBE may subcontract the work to another WBE firm, including an owner-operator who is certified as a WBE. When this occurs, the MBE or WBE who subcontracts work receives credit for the total value of the transportation services the subcontracted MBE or WBE provides on the contract. It should be noted that every effort shall be made by MBE and WBE contractors to subcontract to the same certification (i.e., MBEs to MBEs and WBEs to WBEs), in order to fulfill the goal requirement. This, however, may not always be possible due to the limitation of firms in the area. If the MBE or WBE firm shows a good faith effort has been made to reach out to similarly certified transportation service providers and there is no interest or availability, and they can get assistance from other certified providers, the Engineer will not hold the prime liable for meeting the goal.
- (5) The MBE/WBE may also subcontract the work to a non-MBE/WBE firm, including from an owner-operator. The MBE/WBE who subcontracts the work to a non-MBE/WBE is entitled to credit for the total value of transportation services provided by the non-MBE/WBE subcontractor not to exceed the value of transportation services provided by MBE/WBE-owned trucks on the contract. Additional participation by non-MBE/WBE 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 MBE/WBE and the Contractor will not count towards the MBE/WBE contract requirement.
- (6) A MBE/WBE may lease truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the MBE/WBE 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 MBE/WBE, so long as the lease gives the MBE/WBE absolute priority for use of the leased truck. This type of lease may count toward the MBE/WBE's credit as long as the driver is under the MBE/WBE's payroll.

- (7) Subcontracted/leased trucks shall display clearly on the dashboard the name of the MBE/WBE 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.

### **Banking MBE/WBE Credit**

If the bid of the lowest responsive bidder exceeds \$500,000 and if the committed MBE/WBE participation submitted by Letter of Intent exceeds the algebraic sum of the MBE or WBE goal by \$1,000 or more, the excess will be placed on deposit by the Department for future use by the bidder. Separate accounts will be maintained for MBE and WBE participation and these may accumulate for a period not to exceed 24 months.

When the apparent lowest responsive bidder fails to submit sufficient participation by MBE firms to meet the contract goal, as part of the good faith effort, the Department will consider allowing the bidder to withdraw funds to meet the MBE goal as long as there are adequate funds available from the bidder's MBE bank account.

When the apparent lowest responsive bidder fails to submit sufficient participation by WBE firms to meet the contract goal, as part of the good faith effort, the Department will consider allowing the bidder to withdraw funds to meet the WBE goal as long as there are adequate funds available from the bidder's WBE bank account.

### **MBE/WBE Replacement**

When a Contractor has relied on a commitment to a MBE or WBE firm (or an approved substitute MBE or WBE firm) to meet all or part of a contract goal requirement, the contractor shall not terminate the MBE/WBE 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 MBE/WBE subcontractor, a non-MBE/WBE subcontractor, or with the Contractor's own forces or those of an affiliate. A MBE/WBE 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 MBE/WBE firm shall be submitted to the Engineer for approval on Form RF-1 (*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.

The Contractor shall comply with the following for replacement of a committed MBE/WBE:

#### **(A) Performance Related Replacement**

When a committed MBE is terminated for good cause as stated above, an additional MBE that was submitted at the time of bid may be used to fulfill the MBE commitment. The same holds true if a committed WBE is terminated for good cause, an additional WBE that was submitted at the time of bid may be used to fulfill the WBE goal. A good faith effort will only be required for removing a committed MBE/WBE if there were no

additional MBEs/WBEs submitted at the time of bid to cover the same amount of work as the MBE/WBE that was terminated.

If a replacement MBE/WBE is not found that can perform at least the same amount of work as the terminated MBE/WBE, the Contractor 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 MBEs/WBEs that their interest is solicited in contracting the work defaulted by the previous MBE/WBE or in subcontracting other items of work in the contract.
- (2) Efforts to negotiate with MBEs/WBEs for specific subbids including, at a minimum:
  - (a) The names, addresses, and telephone numbers of MBEs/WBEs who were contacted.
  - (b) A description of the information provided to MBEs/WBEs regarding the plans and specifications for portions of the work to be performed.
- (3) A list of reasons why MBE/WBE quotes were not accepted.
- (4) Efforts made to assist the MBEs/WBEs contacted, if needed, in obtaining bonding or insurance required by the Contractor.

(B) Decertification Replacement

- (1) When a committed MBE/WBE 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 MBE/WBE 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 MBE/WBE is decertified prior to the Department receiving the SAF (*Subcontract Approval Form*) for the named MBE/WBE firm, the Contractor shall take all necessary and reasonable steps to replace the MBE/WBE subcontractor with another similarly certified MBE/WBE subcontractor to perform at least the same amount of work to meet the MBE/WBE goal requirement. If a MBE/WBE 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 MBE/WBE, 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 MBE/WBE based upon the Contractor's commitment, the MBE/WBE shall participate in additional work to the same extent as the MBE/WBE 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 MBEs/WBEs 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 MBE/WBE, the Contractor shall seek participation by MBEs/WBEs 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 MBE/WBE, the Contractor shall seek additional participation by MBEs/WBEs equal to the reduced MBE/WBE participation caused by the changes.

## **Reports and Documentation**

A SAF (*Subcontract Approval Form*) shall be submitted for all work which is to be performed by a MBE/WBE subcontractor. The Department reserves the right to require copies of actual subcontract agreements involving MBE/WBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor 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 MBE/WBE for materials, supplies or services, not otherwise documented by the SAF as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation shall also indicate the percentage (60% or 100%) of expenditures claimed for MBE/WBE credit.

## **Reporting Minority and Women Business Enterprise Participation**

The Contractor shall provide the Engineer with an accounting of payments made to all MBE and WBE 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 contractor from the prequalified bidders' list or the removal of other entities from the approved subcontractors list.

While each contractor (prime, subcontractor, 2nd tier subcontractor) is responsible for accurate accounting of payments to MBEs/WBEs, 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 Contractor to submit the required information in the time frame specified may result in the disqualification of that contractor and any affiliate companies 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 contractor and any affiliate companies from being approved for work on future DOT projects until the required information is submitted.

Contractors reporting transportation services provided by non-MBE/WBE 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.

- (A) Electronic Bids Reporting

The Contractor shall report the accounting of payments through the Department's Payment Tracking System.

- (B) Paper Bids Reporting

The Contractor shall report the accounting of payments on the Department's DBE-IS (*Subcontractor Payment Information*) with each invoice. Invoices will not be processed for payment until the DBE-IS is received.

### **Failure to Meet Contract Requirements**

Failure to meet contract requirements in accordance with Subarticle 102-16(J) of the *2006 Standard Specifications* may be cause to disqualify the Contractor from further bidding for a specified length of time.