

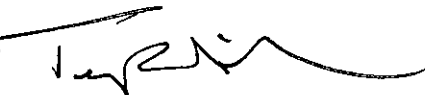
STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

August 27, 2012

MEMORANDUM TO: Division Engineers

FROM: Terry R. Gibson, PE 
Chief Engineer

SUBJECT: Good Faith Effort Review and Appeals Procedures for
Purchase Order Contracts

The reorganization of the Division of Highways has prompted the need for many changes in the Department, and in an effort to have the Purchase Order Contract process mirror the central project process, the good faith effort review has changed. All good faith effort appeals are to be sent to Victor Barbour who will chair the appeals committee.

The Divisions will continue to have the initial hearing with the Division Goal Compliance Committee to review the contractor's documentation criteria for each project. Division Engineers do not necessarily have to be on the committee; however, the letter to the contractor should be issued from the Division Engineer, and it should include the appeals procedure. Division staff responsible for Purchase Order Contracts should thoroughly understand goal setting and compliance procedures. It is critical that the contractor's plan for compliance includes being able to meet the goal, and the contractor must document their plan and cost requirements if not selecting a MB/WB subcontractor.

When a contractor does not meet the goal(s) established by the Department for a Purchase Order Contract and does not prove a good faith effort was made, the contractor may appeal the decision of the Division Goal Compliance Committee. The contractor should initiate his appeal in writing to the Administrator of the Technical Services Division within two working days of the Division's notification of non-good faith. The Division will be informed of the appeal. The contractor will be responsible for furnishing three copies of the contract, denial letter, and backup documentation of their good faith effort to the Technical Services office. This can either be sent via hard copy or electronically to DBE@ncdot.gov. The appeal will be reviewed by the appeals committee which will be comprised of the offices of the Chief Engineer, the Administrator of Technical Services, and the Deputy Secretary of Administration and Business Development.

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Notification of the award of contract should not be made by the Division until a decision has been reached on the appeal.

Beth McKay in the Attorney General's office is the contact for questions regarding Good Faith Effort.

Per the November 15, 2011 Special Provisions for state and federal good faith, there are ten criteria that the Division Goal Compliance Committee will use to determine if the contractor performed a good faith effort. There are also two additional areas that may be taken into consideration if the committee needs to go further in their review: whether the bidder's documentation reflects a clear and realistic plan for achieving the MBE and WBE goals, and the bidder's past performance in meeting the MBE and WBE goals.

The committee will be asking the contractor to illustrate their plan for accomplishing the goals set in the contract, and the strategy used to meet the goals and satisfy the good faith criteria. The reasoning in the decision making process to use their own forces or non-minority subcontractors to fulfill the contract terms will be re-examined.

The Appeals Committee will make a final determination, and the final decision will be sent to the contractor in writing.

cc: Jim Trogdon, P.E., Chief Operating Officer
Jon Nance, P.E., Deputy Chief Engineer