

STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

March 25, 2011

MEMO TO: Jay Bennett, Jonathan Bivens, Stuart Bourne, Ken Cates, Joe Coleman, Judith Corley-Lay, Ron Hancock, Berry Jenkins, Ben Lanier, Don Lee, David Moyar, Gerhard Pilcher, Ian Scott, Lamar Sylvester, Michael Taylor, Kevin Thomas, Brian Webb, and Dennis Wofford

FROM: R. A. Garris, PE  
Contract Officer

SUBJECT: AGC/Roadway Subcommittee Meeting Minutes

The subject committee met on February 17, 2011 at 9:30 a.m. in the Riverwood Conference Room at the Century Center with the following in attendance:

Jay Bennett	Ron Hancock	Ian Scott
Theresa Canales	Joseph Ishak	Lamar Sylvester
Ken Cates	Berry Jenkins	Michael Taylor
Joe Coleman	Ben Lanier	Kevin Thomas
Judith Corley-Lay	David Moyar	Brian Webb
Jeff Garland	Natalie Roskam	Dennis Wofford
Randy Garris		

**1. DISADVANTAGED BUSINESS ENTERPRISE UPDATE (ATTACHMENTS #1 AND #2)**

Ms. Canales reviewed the proposed changes to the Disadvantaged Business Enterprise (DBE) provision (SP1 G61). Attachments include the summary list of changes and the draft provision.

The issue regarding the use of a certified DBE that becomes decertified prior to bid let was discussed. There were approximately four instances over the past year where this situation became an issue. The Contractual Services Unit will review these circumstances through the good faith effort process as needed. The requirement for the DBE to be certified at the time of bid let is a Federal regulation.

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There was a question as to which contact to send the DBE commitment letter of intent. Mr. McKoy is the contact; however, Ms. Canales will investigate a generic email address for the submittals.

Mr. Taylor noted that the Federal limit of 60% credit for the materials and supplies obtained from a DBE dealer is different from the credit given for other DBE contracted construction activities where DBE and non-DBE materials are counted at 100%. Mr. Hancock responded that the requirements are Federal regulations.

Mr. Taylor asked for clarification on page 8, line (C) of the proposed DBE provision where notifications must be sent to DBEs outside of the targeted Divisions within 7 days from the bid let. Ms. Canales clarified that if there were efforts made prior to the 7 days and contact can be shown, it may be considered as a part of good faith effort.

Mr. Taylor asked for clarification on “the same geographic area of the state.” Ms. Canales reported that this statement is intentionally broad so it can be reviewed on a project basis for urban and rural environments.

Mr. Taylor noted on page 10, line (A) of the proposed DBE provision, if the Contractor inputs a DBE goal in excess of the bid DBE goal, the Contractor is held to the higher DBE goal. For example, if the advertised DBE goal is 12% and the Contractor enters 15%, the Contractor is penalized if their actual DBE performance is 14% even though it is above the advertised goal. Ms. Canales responded that this issue has been identified as a disincentive and negotiations are ongoing to address this issue. There is an opportunity to use another DBE to make up the difference through the replacement process.

Mr. Coleman pointed out that Federal regulations can be interpreted differently across states. The Contractual Services Unit is looking at ways to reduce the paperwork deterrent when Contractors’ list excess commitment above the advertised DBE goal and encourage reporting.

## **2. DBE PARTICIPATION TRUCK PLAN (ATTACHMENT #3)**

Mr. Sylvester presented a communication tool, the example Truck Plan attached, to capture the potential truck companies that may be used on a project. The completed form will be used by the project inspection staff to evaluate if trucks are DBE or non-DBE.

## **3. MULTIPLE VEHICLE HAULING**

Mr. Ishak responded to the question of how multiple vehicle versus single vehicle hauling is defined.

Multiple vehicle hauling is defined as the hauling of equipment or materials to or from the project with delivery at intervals of less than five minutes and/or results in more than one vehicle at a particular work site at one time.

Single vehicle hauling is defined as the hauling of equipment or materials to or from the project with delivery at intervals of more than five minutes and results in no more than one vehicle at a particular work site at one time.

Projects have restrictions on hauling based on congestion and safety factors. Mr. Ishak asked that when an opportunity is available to improve hauling efficiency or safety on the project, please notify the Engineer on a project specific basis.

#### **4. PLACEMENT OF SELECT MATERIAL**

Mr. Taylor reported some confusion on recent projects regarding the payment for Select Material Class III, Borrow Excavation and Borrow Material for Geogrid Reinforcement. He noted there were several ways to measure this material.

The Department had tried to simplify the measurement and payment of Select Granular Material when coming from the same source as the borrow excavation; however, this created unbalanced bid issues.

As for the three items Mr. Taylor mentioned, there were discrepancies regarding measurement and payment. The Department will continue to review these items of work for consistent methods of measurement and payment on future projects.

#### **5. ELECTRONIC BIDDING**

Mr. Garris reported that the Department is looking for cost saving and service enhancing ideas like providing electronic email notifications of bid advertisement or bid addenda. The monthly mailing of centrally let advertisements costs the taxpayers approximately \$1,500 per month.

Ms. Canales reported that all the private engineer firms are submitting Prequalification information online. Approval letters are being sent online. The Contract Services Unit is discussing further electronic communication opportunities for communications with centrally let Contractors, good faith effort submissions, and mass emailing of DBE solicitations.

#### **6. TRACKING USE OF RECYCLED CONSTRUCTION MATERIALS (ATTACHMENT #4)**

Mr. Hancock and Mr. Garland discussed the Department's reporting effort on recycling construction material and projects using environmentally friendly materials. An example of the annual report from the last fiscal year was distributed. Mr. Garland solicited ideas on how to capture material estimates and "best practices" from projects using green construction methods or materials which ultimately diverts materials from the landfill. The preconstruction meeting was mentioned as an opportunity to discuss reporting mechanisms for each project.

#### **7. ABC GRADATION FAILURE INVESTIGATIONS (ATTACHMENT #5)**

Mr. Hancock provided a handout explaining changes to the failure investigation. The focus of the investigation will be to eliminate future failures. If there is a failure, expect an onsite meeting to review the results. The Federal Highway Administrations' audit noted this as an issue for the past

Roadway Subcommittee  
February 17, 2011

five years. Program modifications are expected to provide quicker feedback and reduce the risk for multiple failures on a project.

The next meeting will be held on **Thursday, April 21st**, at **9:30 am** in the **Riverwood Conference Room** at the **Century Center, Building B**.

CC: Victor Barbour, PE  
Andy Gay, PE

### Highlighted Changes between the "Old" and "New" SP1 G61

- Clarified some of the definitions as well as the language throughout the document.
- Added a section called "Forms and Websites Referenced in this Provision" to explain the different forms and their use. At this point introduced the Replacement Form, Joint Check form, SAF form (taking the place of the RS-1A thru D), etc.
- Under "Listing of DBE Subcontractors in Contract" we added paragraph (A)3 which states that the bidder is responsible for ensuring that the DBE firm is certified at the time of bid. Also paragraph (C) was added as to what to do if the prime is a DBE themselves.
- Under "Written Documentation – Letter of Intent" added general language that the goal can be met not just by subcontractors, but also by manufacturers and regular dealers (clarification purposes).
- Broke down section entitled "Counting DBE Participation Toward Meeting DBE Goal of Zero or More", to include DBE Utilization, Joint Checks, Subcontracts and DBEs in Trucking.
- Under "Good Faith Effort for Projects with DBE Goals More than Zero" it was added what to do if the 6<sup>th</sup> day falls on a state holiday.
- An "Appeal" section was added in case the contractor wishes to appeal the decision made by the Goal Compliance Committee of non-good faith.
- Under "DBE Replacement" we followed the DBE Final Rule (NPRM at the time) which states that a listed DBE cannot be replaced by another DBE without cause and brings in the Replacement Form.
- Under "Reports" a paragraph was added on submission of a trucking plan if transportation services are going to be used to meet the goal.

## **DISADVANTAGED BUSINESS ENTERPRISE:**

SPI 661

### **Policy**

It is the policy of the North Carolina Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in *49 CFR Part 26* shall have equal opportunity to compete fairly for and to participate in the performance of contracts financed in whole or in part by Federal Funds.

### **Obligation**

The Contractor, subcontractor, and sub-recipient shall not discriminate on the basis of race, religion, color, national origin, age, disability or sex in the performance of this contract. The Contractor shall comply with applicable requirements of *49 CFR Part 26* in the award and administration of federally assisted contracts. Failure by the Contractor to comply with these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Department deems necessary.

### **Definitions**

*Committed DBE* - Any DBE listed on the Listing of DBE Subcontractors (Participants) approved by the Department at the time of bid submission or any DBE utilized as a replacement for a DBE firm listed on the Listing of DBE Subcontractors (Participants).

*Contract Goal Requirement* - The approved DBE participation submitted at the time of bid by the Contractor.

*DBE Goal* - The DBE goal at advertisement of proposal.

*Department* - North Carolina Department of Transportation

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

*Goal Confirmation Letter* - Written documentation confirming the Contractor's approved committed DBE participation.

*Letter of Intent* - Written documentation of the bidder/offeror's commitment to use a DBE subcontractor or supplier (manufacturer or regular dealer), and confirmation from the DBE that it is participating in the contract.

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

*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* - A program that provides comprehensive services and information to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients of USDOT funds in the state and not limited to the Department of Transportation only. The Certification Program is in accordance with *49 CFR Part 26*.

*USDOT* - United States Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

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

*DBE Payment Tracking System* On-line system in which the Contractor enters the payments made to DBE 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 DBE 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 DBE Replacement Request Form* - Form for replacing a listed DBE.  
<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.

*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>

*Letter of Intent to Perform as a Subcontractor* - Form signed by the Contractor and the DBE subcontractor, manufacturer or regular dealer that affirms that a portion of said contract is going to be performed by the signed DBE for the amount listed on the bid.  
<http://www.ncdot.org/doh/preconstruct/ps/contracts/letterofintent.pdf>

*Listing of DBE Subcontractors Form* - Form for entering DBE subcontractors on a project that will meet this DBE goal. This form is for paper bids only.

<http://www.ncdot.gov/doh/preconstruct/ps/word/MISC2.doc>

*Subcontractor Quote Comparison Sheet* – Spreadsheet for showing all subcontractor quotes in the work areas where DBEs 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)

### **DBE Goal**

The following DBE goal for participation by Disadvantaged Business Enterprises is established for this contract:

Disadvantaged Business Enterprises **[number to the nearest tenth]** %

- (A) *If the DBE goal is more than zero*, the Contractor shall exercise all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises participate in at least the percent of the contract as set forth above as the DBE goal.
- (B) *If the DBE goal is zero*, the Contractor shall continue to recruit DBEs and report the use of DBEs during the construction of the project. A good faith effort will not be required with a zero DBE goal.

### **Directory of Transportation Firms**

Real-time information is available about firms doing business with the Department and firms that are certified through North Carolina's Unified Certification Program in the Directory of Transportation Firms. Only firms identified in the Directory as DBE certified shall be used to meet the DBE goal. The Directory of Transportation Firms can be found at the following link, <https://apps.dot.state.nc.us/vendor/directory>

The listing of an individual firm in the Department's directory shall not be construed as an endorsement of the firm's capability to perform certain work.

### **Listing of DBE Subcontractors in Contract**

Only those firms with current DBE certification at the time of bid opening will be acceptable for listing in the bidder's submittal of DBE participation. The Contractor shall indicate the following required information:

- (A) Electronic Bids



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

- (1) The names and addresses of DBE firms committed to participate in the contract. If the bidder uses the updated listing of DBE firms shown in Expedite, the bidder may use the dropdown menu to access the name and address of the DBE firm.
- (2) The contract line numbers of work to be performed by each DBE firm. When no figures or firms are entered, the bidder will be considered to have no DBE participation.
- (3) The bidder shall be responsible for ensuring that the DBE 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 DBE's participation will not count towards achieving the DBE goal.

**(B) Paper Bids**

**Blank forms will not be deemed to represent zero participation.** Bids submitted that do not have DBE 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 the DBE goal is more than zero*, bidders at the time the bid proposal is submitted, shall submit a listing of DBE participation, including the names and addresses on *Listing of DBE 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 DBE participation for the contract. If bidders have no DBE participation, they shall indicate this on the *Listing of DBE Subcontractors* by entering the word "None" or the number "0." This form shall be completed in its entirety.
- (2) *If the DBE 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 DBE Subcontractors* contained elsewhere in the contract documents.

**(C) DBE Prime Contractor**

When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the goal or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a prime contract will meet the DBE goal by virtue of the work it performs on the prime contract with its own forces. However, only the work that is performed by the DBE prime and any other DBE

subcontractors count toward the DBE goal. The DBE bidder shall list themselves along with any DBE subcontractors, if any, in order to receive credit toward the DBE goal.

For example, if the DBE goal is 45% and the DBE bidder will only perform 40% of the contract work, the prime will list themselves at 40% and the additional 5% shall be obtained through additional DBE participation with DBE subcontractors or documented through a good faith effort.

DBE prime contractors shall also follow Sections A and B above under Listing of DBE Subcontractor in Contract just as a non-DBE prime would.

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

The bidder shall submit written documentation of the bidder/offeror's commitment to use a DBE subcontractor, manufacturer or regular dealer whose participation it submits to meet a DBE goal and written confirmation from each DBE, listed in the proposal, indicating their participation in the contract. This documentation shall be submitted on the Department's form titled *Letter of Intent to Perform as a Subcontractor*. It shall be received in the office of the State Contractor Utilization Engineer 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 DBE submitted with the bid, indicating their participation in the contract, or if the form is incomplete (i.e. both signatures are not present), the DBE participation will not count toward meeting the DBE goal. If the lack of this participation drops the commitment below the advertised goal, the Contractor shall submit evidence of good faith efforts completed in its entirety to the State Contractor Utilization Engineer 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.

### **Counting DBE Participation Toward Meeting DBE Goal of Zero or More**

- (A) The total dollar value of the participation by a certified DBE will be counted toward the contract requirement. The total dollar value of participation by a certified DBE will be based upon the value of work actually performed by the DBE and the actual payments to DBE firms by the Contractor.
- (B) When a DBE performs as a participant in a joint venture, the Contractor may count toward its DBE goal a portion of the total value of participation with the DBE in the joint venture, that portion of the total dollar value being a distinct clearly defined portion of work that the DBE performs with its forces.

#### **(C) (1) DBE Utilization**

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

(2) **Joint Checks**

Prior notification of joint check use shall be required when counting DBE 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.

(3) **Subcontracts**

A DBE may enter into subcontracts. Work that a DBE subcontracts to another DBE firm may be counted toward the contract requirement. Work that a DBE subcontracts to a non-DBE firm does not count toward the contract requirement. If a DBE 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 DBE is not to be performing a commercially useful function. The DBE may present evidence to rebut this presumption to the Department for commercially useful functions. The Department's decision on the rebuttal of this presumption is subject to review by the Federal Highway Administration but is not administratively appealable to USDOT.

(4) **DBE Utilization in Trucking**

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

- (a) The DBE 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 DBE goals.

- (b) The DBE shall itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - (c) The DBE 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.
  - (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (e) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. The value of services performed under lease agreements between the DBE and the Contractor will not count towards the DBE contract requirement.
  - (f) For purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.
- (D) A contractor may count toward its DBE requirement 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from a DBE regular dealer and 100 percent of such expenditures from a DBE manufacturer.
- (E) A contractor may count toward its DBE requirement the following expenditures to DBE firms that are not manufacturers or regular dealers:
- (1) The fees or commissions charged by a DBE 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 DBE, which is neither a manufacturer or 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.

### **Good Faith Effort for Projects with DBE Goals More Than Zero**

If the DBE participation submitted in the bid by the apparent lowest responsive bidder does not meet or exceed the DBE goal, the apparent lowest responsive bidder shall submit to the Department documentation of its good faith efforts made to reach the DBE goal. One complete set and 9 copies of this information shall be received in the office of the State Contractor Utilization Engineer 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.

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 DBE quotations shall be a part of the good faith effort submittal as necessary to demonstrate compliance with the factors listed below which the Department considers in evaluating good faith efforts. This documentation may include written subcontractor quotations, telephone log notations of verbal quotations, or other types of quotation documentation.

The following factors will be used to determine if the bidder has made adequate good faith effort:

- (A) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform DBEs of subcontracting opportunities.
- (B) Whether the bidder provided solicitations through all reasonable and available means (e.g. advertising in newspapers owned and targeted to the Disadvantaged) at least 10 calendar days prior to bid opening. Whether the bidder provided written notice to all DBEs listed in the NCDOT Directory of Transportation Firms, within the Divisions and surrounding Divisions where the project is located, specializing in the areas of work (as noted in the DBE Directory) that the bidder will be subletting.
- (C) Whether the bidder followed up initial solicitations of interests by contacting DBEs to determine with certainty whether they were interested. If a reasonable amount of DBEs within the targeted Divisions do not provide an intent to quote or no DBEs specialize in the subcontracted areas, the bidder shall notify DBEs outside of the targeted Divisions that specialize in the subcontracted areas, and contact within seven days from the let date, the Business Development Manager in the Business Opportunity and Work Force Development Unit to give notification of the bidder's inability to get DBE quotes.
- (D) Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal. This includes, where appropriate,

breaking out contract work items into economically feasible units to facilitate DBE participation, even when the bidder might otherwise perform these work items with its own forces.

- (E) Whether the bidder provided interested DBEs with adequate and timely information about the plans, specifications and requirements of the contract.
- (F) Whether the bidder negotiated in good faith with interested DBEs without rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be noted in writing with a description as to why an agreement could not be reached.
- (G) Whether quotations were received from interested DBE firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. The fact that the DBE firm's quotation for the work is not the lowest quotation received will not in itself be considered as a sound reason for rejecting the quotation as unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered as sound reason for rejecting a DBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy DBE goal. All subcontractor quotes in the work areas where DBEs quoted shall be submitted on the Department's Subcontractor Quote Comparison Spreadsheet.
- (H) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract DBE goal when the work to be sublet includes potential for DBE participation.
- (I) Whether the bidder made any efforts and/or offered assistance to interested DBEs in obtaining the necessary equipment, supplies, materials, insurance, and/or bonding to satisfy the work requirements in the bid proposal.
- (J) Any other evidence that the bidder submits which show that the bidder has made reasonable good faith efforts to meet the DBE goal.

As a part of the good faith effort, if a bidder is the apparent lowest responsive bidder on more than one project within the same letting located in the same geographic area of the state, the Department will consider allowing the bidder to combine the DBE participation as long as the overall DBE goal value of the combined projects is achieved.

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 the Department that the DBE goal can be met or that adequate good faith efforts have been made to meet the DBE goal.

## Appeal

A contractor may appeal the determination of 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. The appeal shall be made within 2 business days of notification of the determination that they did not perform a Good Faith Effort. The State Contractor Utilization Engineer will notify the Contractor verbally and in writing. Notification will be made the same day as the Goal Compliance Committee meeting.

## DBE Replacement

When a contractor has relied on a commitment to a DBE firm to meet all or part of a contract goal requirement, the contractor shall not terminate for convenience the DBE subcontractor and then perform the work of the terminated subcontract with its own forces or those of an affiliate without the Engineer's written approval based upon a finding of good cause for the termination. This is true whether the Contractor proposed to replace the DBE's participation with another DBE subcontractor, a non-DBE subcontractor, or perform with the Contractor's own forces. 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.

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

### (A) Performance Related Replacement

When a DBE is terminated or fails to complete its work on the contract for any reason, the Contractor shall take all necessary, reasonable steps to replace the DBE with another DBE to perform at least the same amount of work as the DBE that was terminated. The Contractor is encouraged to first attempt to find another DBE firm to do the same work as the DBE that was being terminated.

To demonstrate necessary, reasonable good faith efforts, the Contractor shall document the steps they have taken to replace any DBE who is unable to perform successfully with another DBE. Such documentation shall include but not be limited to the following:

- (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 or demonstrate that it has made a good faith effort to do so.

### **Changes in the Work**

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 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.



## **Reports**

A Subcontract Approval Form shall be submitted for all work which is to be performed by a DBE subcontractor, both committed and non-committed subcontractors. The Department reserves the right to require copies of actual subcontract agreements involving DBE subcontractors.

When using transportation services to meet the contract commitment, the Contractor shall submit a proposed trucking plan in addition to the Subcontract Approval Form. 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 DBE for materials, supplies or services, not otherwise documented by the Subcontract Approval Form as specified above, the Contractor shall furnish the Engineer a copy of the agreement. The documentation should also indicate the percentage (60% or 100%) of expenditures claimed for DBE credit.

## **Reporting Disadvantaged Business Enterprise Participation**

The Contractor shall provide the Engineer with an accounting of all payments made to all DBE firms, whether committed or not, 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:

- (1) Withholding of money due in the next partial pay estimate; or
- (2) 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 DBEs, 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 working on any DOT project until the required information is submitted.

Contractors reporting transportation services provided by non-DBE 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 DBE Payment Tracking System.

(B) Paper Bids Reporting:

The Contractor shall report the accounting of payments on the Department's DBE Subcontractor Payment Information Form 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 *Standard Specifications* may be cause to disqualify the Contractor from further bidding for a specified length of time.

Final Draft 1/11

Truck Plan

Contract No: C123456  
County: Dancoe

Listing of Firms

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

Total Available Trucks 22

Individual Truck Listing

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

**North Carolina Department of Transportation  
Recycled Products & Solid Waste Utilization in Construction & Maintenance Projects  
Fiscal Year July 1, 2009 - June 30, 2010**

Division: All Divisions					
Reporting Location: All Divisions					
Completed By: J Scouten (9/13/10)		Choose English OR Metric Quantities			
Product Category and Description	Usage	English Measure	English Quantity	Metric Measure	Metric Quantity
<b>1-Asphalt:</b>					
Reclaimed Asphalt Pavement (RAP)	Asphalt Mix Additive	ton	529,849	metric ton(tonne)/mtn	
Reclaimed Asphalt Shingles (RAS)	Asphalt Mix Additive	ton	4,321	metric ton(tonne)/mtn	
Reclaimed Asphalt Pavement (RAP)	Shoulder Reconstruction	cubic yard/yd3	24,965	cubic meter/m3	
Hot-In-Place Asphalt Recycling	Pavement	square yard/yd2	0	square meter/m2	
Full-Depth Reclamation	Pavement	cubic yard/yd3	3,400	cubic meter/m3	
Asphalt Shavings From Rumble Strip Install	Driveway Ruts	ton	180		
<b>2-Clearing and Grubbing Debris:</b>					
Mulch	Mulch	acre/acr	23	hectare/hec	
Mulch	Mulch - Roadside Environmental	cubic yard/yd3	5,600	cubic meter/m3	
Mulch	Erosion Control	cubic yard/yd3	166	cubic meter/m3	
<b>3-Coal Combustion Products:</b>					
Fly Ash	Concrete Mix Additive	ton	8,710	metric ton(tonne)/mtn	
Fly Ash	Embankment Fill	cubic yard/yd3	0	cubic meter/m3	
Fly Ash	Flowable Fill	cubic yard/yd3	0	cubic meter/m3	
Bottom Ash	Embankment Fill	cubic yard/yd3	0	cubic meter/m3	
<b>4-Concrete:</b>					
Recycled Concrete	Aggregate Base Course (ABC)	ton	264	metric ton(tonne)/mtn	
Recycled Concrete	Fill Material	ton	340	metric ton(tonne)/mtn	
Crack and Seal	Base Material	ton	75	metric ton(tonne)/mtn	
Rubblized Concrete	Base Material	ton	0	metric ton(tonne)/mtn	
<b>5-Glass:</b>					
Recycled Glass Beads	Pavement Markings	ton	4,550	metric ton(tonne)/mtn	
Crushed Glass	Subdrain Backfill	cubic yard/yd3	0	cubic meter/m3	
Crushed Glass	Aggregate Base	cubic yard/yd3	0	cubic meter/m3	
<b>6-Plastic:</b>					
Recycled Plastic Offset Blocks	Guardrail Offset Blocks	each/ea	22,530	each/ea	
Recycled Plastic Fence Posts (All Sizes)	Fence Posts	each/ea	0	each/ea	
Recycled Plastic Pipe (All Types and Sizes)	Pipe	linear foot/lin	560	linear meter/lin	
Recycled Plastic Sign Supports	Sign Supports	each/ea	0	each/ea	
Recycled Plastic Flexible Delineators	Flexible Delineators	each/ea	50	each/ea	
<b>7-Scrap Tires:</b>					
Chipped Tires	Embankment Fill	cubic yard/yd3	0	cubic meter/m3	
Chipped Tires	Lightweight Aggregate	cubic yard/yd3	0	cubic meter/m3	
Crumb Rubber	Crack Sealant	pound/lb	3,288	kilogram/kg	
Crumb Rubber	Asphalt Mix Additive	pound/lb	0	kilogram/kg	
Rubber Mulch	Mulch	cubic yard/yd3	2,375	cubic meter/m3	
Tire Sidewalls	Traffic Drum Ballast	each/ea	6,297	each/ea	
Whole Tires	Retaining Wall	each/ea	356	each/ea	
Weed Control Matting	Under Guardrail	pound/lb	173,145		

Product Category and Description	Usage	English Measure	English Quantity	Metric Measure	Metric Quantity
<b>8-Roadside Environmental:</b>					
Animal Waste	Fertilizer/Soil Amendment	ton	0	metric ton(tonne)/mtn	
Bioremediated Petroleum Affected Soils	Soil Amendment	cubic yard/yd3	217	cubic meter/m3	
Sludge	Soil Amendment	ton	0	metric ton(tonne)/mtn	
<b>9-Other:</b>					
Paper	Phone Books	pound/lb	19		
Mabey Bridge	Temporary Detour Bridge	each/ea	1		
Chain Link Fence	Reset Existing Fence	linear foot/ft	164		
Cardboard	Boxes	pound/lb	10		
Plastic Bottles	Bottles	pound/lb	40		
Aluminum	Cans	pound/lb	10		
Asphalt From Plants & Roadway Cores	Testing	ton	50		
Tires	Retreads	pound/lb	6,000		
<b>10-Reused Materials:</b>					
Aggregate Base Course	Aggregate Base Course	ton	14,709	metric ton(tonne)/mtn	
Concrete Pipe	Concrete Pipe	linear foot/ft	2,029	linear meter/m	
Guardrail	Guardrail	linear foot/ft	15,038	linear meter/m	
Portable Concrete Barrier	Portable Concrete Barrier	each/ea	4,127	each/ea	
Sign Posts	Sign Posts	each/ea	5,917	each/ea	
Signal Heads	Signal Heads	each/ea	352	each/ea	
Signs	Signs	each/ea	14,697	each/ea	
Steel Beams	Steel Beams	linear foot/ft	28,052	linear meter/m	
40' Class III Wood Signal Post	Signal Pole	each/ea	10		

## SECTION 6 – CHECK SAMPLES

**Check Samples (ABC)** – The Area Roadway Construction Engineer and appropriate representative from the aggregate producer should be notified prior to taking a check sample. Check sample(s) will be taken by a representative of Materials and Tests with assistance from project personnel. When obtaining check samples from lots that are rejected, the following steps are to be taken:

- (1) Perform additional sampling of the lot. The procedure for this additional sampling consists of obtaining another sample within 5 feet of the original sample.
- (2) If check sample test results for the lot are within the limits for LL/PI, and gradation, the lot will be considered acceptable.
- (3) When the test results for a lot are outside any of the limits for gradation, and the lot cannot be corrected by the addition of aggregate, or when the gradation of a corrected lot exceeds any of the limits of Table 1010-1, Column B, or the LL or PI exceed the limits of Table 1010-1 Column B, the lot will be rejected and shall be removed and replaced at no additional cost to the Department unless otherwise approved by the Engineer. Correction of a lot when LL or PI results exceed Specifications will not be permitted.
- (4) When the test results for a lot are outside any of the limits shown in 3 above and the test results indicate the material can be corrected by the addition of aggregate, the Engineer may allow the material to be corrected provided there is no additional cost to the Department for furnishing, adding, remixing, reshaping, and re-compacting of the added material. The method of correcting the lot shall be approved both by the Area Roadway Construction Engineer and the Soils Engineer.
- (5) One sample will be randomly taken from the corrected lot. When the LL/PI or gradation of a corrected lot exceeds any of the limits of Table 1010-1, Column B, the material will be removed and replaced at no additional cost to the Department in accordance with the requirements of Article 520-6 of the Standard Specifications.

In addition to taking a check sample, items that should be reviewed when failing samples occur are:

- Proper sampling techniques
- Sample location
- QC/QA results
- Method of placement and handling of material

**Check Samples (CTBC)** - Check Samples of the material will be taken by a representative of Materials and Tests with assistance from project personnel in accordance with the procedures listed below if cement has not yet been added. The Area Roadway Construction Engineer and appropriate representative from the aggregate producer should be notified prior to taking the check sample.