



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION


ROY COOPER
GOVERNOR

J. ERIC BOYETTE
SECRETARY

June 29, 2020

MEMORANDUM

TO: R. E. Davenport, Jr., PE
State Contract Officer

FROM: T. M. Little, PE 
Chief Engineer

SUBJECT: Contract Goal Compliance Committees

Attached are the revised operating procedures, including committee memberships, for the Goal Setting Committee, Good Faith Effort Review Committee, and the Good Faith Effort Appeals Committee for Central Let projects. As a part of this procedural update the Staff Review Committee has been eliminated. These procedures are effective immediately and committee members will be contacted in the coming weeks to participate in an initial training session.

Questions should be directed to Lamar Sylvester in the Chief Engineer's Office.

Attachment

cc: J. F. Sullivan, III, PE
R. W. Lewis, PE
D. L. Howard
S. M. Scales
C. A. Peoples, PE
M. L. Sylvester, PE
C. M. Werner, PE
B. L. Walston, PE
J. T. Orthner, PE

CENTRAL LET PROJECTS

THREE (3) STANDING COMMITTEES	CHAIRPERSON(S)
GOAL SETTING COMMITTEE	STATE PROPOSALS AND SPECIFICATIONS ENGINEER
GOOD FAITH EFFORT REVIEW COMMITTEE	STATE PREQUALIFICATION ENGINEER
GOOD FAITH EFFORT APPEALS COMMITTEE	STATE CONTRACT OFFICER, FACILITATOR

GOAL SETTING COMMITTEE

Policy

In accordance with Federal Requirements of 49 CFR Part 26 and Chapter 136 of the North Carolina General Statutes, the Department shall meet the maximum feasible portion of the DBE/MBE/WBE aspirational goal(s) by using race-neutral means. If the goal(s) cannot be met by race-neutral means alone, contract goals shall be set to achieve the aspirational goal(s). At that point, the **Contract Standards and Development Unit** shall convene a Goal Setting Committee to determine the DBE (Disadvantage Business Enterprise), and MBE (Minority Business Enterprise)/WBE (Women Business Enterprise) contract goals for Federal and State-funded central let projects.

Goal Setting Committee Members

Chairperson: State Proposals and Specifications Engineer (Vote Only to Break A Tie)

Members:

- State Utilization and Compliance Manager (Voting Member)
- State Prequalification Engineer (Voting Member)
- State Construction Operations Engineer (Voting Member)
- BOWD Manager (Voting Member)
- FHWA Civil Rights Program Manager (Non-voting Member)

A staff member from the Utilization and Compliance Unit shall attend the meeting to provide information as needed and take official meeting minutes during the Committee's deliberations. In the event the designated Chairperson cannot be in attendance, the State Contract Officer will act as Chairperson.

Responsibilities and Procedures

The Chairperson will forward available project information for the upcoming project letting to the members at least five (5) days ahead of the meeting for review and analysis. The "Interest Report" generated by Contract Standards and Development Staff, consists of the project's geographic location, scope and characteristics, and percentage of the type of work that can be subcontracted out and performed by DBE/MBE/WBEs. This information along with knowledge of what firms perform the work based on the Directory of Firms or prior contracting, is used in determining the appropriate goal(s) for the project. The committee shall determine goal(s) for each project by consensus. If consensus cannot be reached, then a majority vote of the voting members shall determine the final goal(s). The Chairperson shall submit the committee's final decision to the Proposals Engineer who will enter the goals into the appropriate project proposal.

Meeting Schedule

The Goal Setting Committee typically meets the first Tuesday of each month or at a designated date and time appointed by the Chairperson as determined by the availability of the project's Interest Report.

Reporting and Tracking

The Utilization and Compliance Unit shall be responsible for keeping and maintaining a record of the meeting. The record shall include, but not be limited to, any notes taken by the committee

regarding the goal setting process, the results of any votes taken during the meeting as well any materials received and considered as part of the process. This information taken together shall be considered the official record of the meeting. Official minutes of all meetings shall be submitted to the committee within five (5) business days after the meeting. The committee shall review and provide approval or necessary changes within two (2) business days, or the minutes will be deemed final.

Training

The Utilization and Compliance Manager and State Contract Officer will coordinate training for all committee members on an annual basis. All committee members must complete training prior to participating on the Goal Setting committee.

GOOD FAITH EFFORT REVIEW COMMITTEE

Policy

In accordance with Federal Requirements 49 CFR Part 26 and Chapter 136 of the North Carolina General Statutes, a bidder must either obtain enough DBE or MBE/WBE participation to meet the advertised goal(s); or document that it made an adequate good faith effort to meet the advertised goal(s) even though it did not succeed. In the event the project goal(s) were not met, the **Contract Standards and Development Unit** shall convene a Good Faith Effort Review Committee to determine whether a good faith effort was made to meet the advertised goal(s) in accordance with the special provision in the contract.

Good Faith Effort Review Committee Members

Chairperson: State Prequalification Engineer (Vote Only to Break A Tie)

Members:

- BOWD Manager (Voting Member)
- Technical Services Staff Engineer (Voting Member)
- State Construction Operations Engineer (Voting Member)
- Multi-Modal Representative - Division of Aviation Business Development Manager or Rail Construction Manager in the absence of the Division of Aviation Representative (Voting Member)
- FHWA Civil Rights Program Manager (Non-Voting Member)

A staff member from the Utilization and Compliance Unit shall attend the meeting to provide information as needed and take official minutes during the Committee's deliberations. If the designated Chairperson cannot be in attendance, the Chairperson will become the State Contract Officer.

Responsibilities and Procedures

The Utilization and Compliance Unit will collect and review the good faith packages submitted by the apparent low bidder for completeness, and request additional information if needed. The Utilization and Compliance Unit will send the submittals electronically to the GFE committee prior to the committee meeting. The committee shall evaluate the submittals based on the Good Faith criteria in the proposal special provisions. The committee may request more information from the bidder concerning the good faith criteria outlined in the proposal. The Chairperson shall ensure the bidder is available to the committee to answer questions, if necessary. The committee may also request additional expertise, such as the Attorney General's Office.

The Good Faith Effort Review Chairperson shall preside over the Good Faith Effort Review Committee meetings. The committee shall determine GFE by majority vote. The Chairperson shall vote only to break a tie.

Once a determination is made, the Chairperson will verbally notify the bidder immediately following the meeting. By close of business the following business day, the Chairperson will electronically send a letter to the bidder detailing the specific reasons for the determination. If GFE is found, the letter will contain the Contract Goal Requirement. If GFE is not found, the letter will include a notice of appeal rights and appeals procedures as described below.

Meeting Schedule

The Good Faith Effort Review Committee meeting will typically be held on the 10th day following the let date (typically on a Friday) to allow for submittal and review of Good Faith packages. If there is a holiday on this Friday, the Good Faith Effort Review meeting will be held on the following Monday or at a designated date appointed by the Chairperson.

Appeals Process

A bidder may appeal the determination of the Good Faith Effort Review Committee. If a bidder wishes to appeal the determination, they shall electronically provide written notification to the Chairperson within two (2) business days of verbal notification of the determination that they did not perform a GFE.

Reporting and Tracking

The Utilization and Compliance Unit shall be responsible for keeping and maintaining a record of the meeting. The record shall include, but not be limited to, the notes regarding the review process, and any information reviewed by the committee in its deliberation including any information submitted by the bidder as part of the process. This information taken together shall be considered the official record of the meeting. Official minutes of all meetings shall be submitted to the committee within five (5) business days of the meeting. The committee shall review and provide approval or necessary changes within two (2) business days, or the minutes will be deemed final.

Training

The Utilization and Compliance Manager and State Contract Officer will coordinate training for all committee members on an annual basis. All committee members must complete training prior to participating on the Good Faith Effort Review committee.

GOOD FAITH EFFORT APPEALS COMMITTEE

Policy

In accordance with Federal Requirements 49 CFR Part 26 and Chapter 136 of the North Carolina General Statutes a bidder must either obtain enough DBE or MBE/WBE participation to meet the advertised goal(s); or document that it made an adequate good faith effort to meet the advertised goal(s) even though it did not succeed. If the GFE Review Committee determines that a bidder did not make a good faith effort to meet the advertised goal, and the bidder chooses to appeal their determination, then the **Contract Standards and Development Unit** shall convene a Good Faith Effort Appeals Committee to determine whether a good faith effort was made to meet the advertised goal(s) in accordance with the special provision in the contract.

Good Faith Effort Appeals Committee Members

Chairperson: State Contract Officer (Non-voting Member)

Members:

- Director of Technical Services (Voting Member)
- Director of Office of Civil Rights (Voting Member)
- Deputy Chief Engineer (Voting Member)
- Inspector General Representative (Non-Voting Member)
- Attorney General Representative (Non-Voting Member)
- FHWA Deputy Division Administrator (Non-Voting Member)

A staff member from the Utilization and Compliance Unit shall attend the meeting to provide information as needed in the Committee's deliberations. The Attorney General representative should not be the same representative who provided advice and counsel at the GFE Review Committee meeting.

Responsibilities and Procedures

Upon notification of an appeal, the Chairperson will arrange a meeting of the GFE Appeals Committee. The committee will review the original information submitted by the bidder and the GFE Review Committee determination and official record. The bidder may attend in person or by video and may also provide written documentation or arguments clarifying why the GFE Review committee's determination was erroneous. The bidder will not be allowed to submit new information that was not part of the official record from the GFE Review for consideration on appeal. The committee will either uphold or overturn the original decision by majority vote. If the committee overturns the original decision, it must provide with specificity a written justification on why it determined the GFE Review committee's decision was erroneous. If the committee cannot find error in the original decision, the original decision will stand. The State Contract Officer will provide written notice of decision to the bidder within two (2) days of meeting. A court reporter will be made available for all appeals.

Meeting Schedule

The Chairperson will set the date and time for the committee meeting. The committee meeting shall take place within 30 days of written notification of appeal.

Reporting and Tracking

The Utilization and Compliance Unit shall be responsible for keeping and maintaining a record of the meeting. The record shall include, but not be limited to, the transcript and any information reviewed by the committee in its deliberation including any information submitted by the bidder as part of the process. This information taken together shall be considered the official record of the meeting. Official minutes of all meetings shall be submitted to the committee within five (5) business days of the meeting. The committee shall review and provide approval or necessary changes within two (2) business days, or the minutes will be deemed final.

Training

The Utilization and Compliance Manager and State Contract Officer will coordinate training for all committee members on an annual basis. All committee members must complete training prior to participating on the Good Faith Efforts Appeals