



Considerations for DBE Performance Plans

All information on best practices for formulating open ended DBE performance plans is meant to serve as a guide and is not all inclusive. Prime contractors must always use good business judgement when preparing their DBE Performance Plans. An open-ended DBE performance plan is written confirmation from the proposer that they either have fulfilled or will fulfill following guidelines.

1. At the bare minimum a proposer **must** commit to meeting the goal to receive any points.
 - a. Every proposer who commits to meet the goal is given the same base score;
 - b. No extra points given for exceeding the goal.
 - c. Must include an estimated time frame in which actual DBE subcontracts would be executed per 49 CFR changes effective May 9, 2024.
2. Extra points may be based upon some or all of the following:
 - a. Did they identify scopes of work for disadvantaged business enterprises (DBEs) by selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved;
 - i. Were work areas listed with documentation, with estimated dollar value and percentage of the total contract identified for that work area.
 - b. Identify disadvantaged business enterprise firms to do the work.
 - c. Assistance to be offered to DBE firms such as:
 - i. Training;
 - ii. Mentoring;
 - iii. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the contractor;
 - iv. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services;
 - v. Did they list any efforts to assist Certified Firms with other technical assistance or information related to scope of work, plans, specifications, and requirements for the work to Certified Firms.
 - vi. Did they effectively use the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations on a case-by-case basis to provide assistance in the recruitment and placement of DBEs;
 1. It is possible that a group of prime contractors or a state or local prime contractors' association could join efforts to provide various kinds of assistance to a considerable number of DBE's in Nevada in a way that would not create a dependent relationship between any given DBE and a particular prime contractor.
 - vii. Where possible, did the proposer establish flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation;
 - viii. Did they partner with the NDOT DBE Resource Center;
 - ix. Other assistance to help certified firms learn and grow.



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1. Prime contractors with questions about the appropriateness of their assistance relationship with DBE firms should consult with the NDOT division of external civil rights for advice regarding the appropriateness or reasonableness of the assistance.
 - d. Did they commit to detailed monthly progress reports.
 - e. Did they commit to monthly meetings to track compliance.
 - f. Did they identify their internal DBE Compliance Officer.
 - g. Did they identify challenges or possible challenges and tools to overcome those challenges.
 - h. Did they break out scopes of work into smaller packages to facilitate more disadvantaged business enterprise participation. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - i. This point is very critical, particularly when the prime is struggling to attain the DBE goal set for the project.
 - i. Did they provide information about past projects of a similar size with goals:
 - i. What was the goal;
 - ii. What was the final attainment;
 - iii. Was there diversity in DBE utilization;
 - iv. Was assistance offered;
 - v. Did they conduct training or mentoring;
 - j. Did they outline any past DBE program noncompliance, litigation, sanctions, claims, or disputes?
 - k. Did the proposer attend a DBE project event prior to RFP submittal?
 - l. If applicable, did the proposer attend a pre-proposal or pre-SOQ meeting?
 - i. Were they on time and attend the entire meeting.
 - ii. Did they sign the attendance sheet, providing the name and title of person(s) representing proposer's/bidder's firm.
 - m. Was the proposer's engagement early and continuous with certified firms? Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
 - n. Does the prime contractor have an internal small business goal?
 - o. Does the prime contractor show efforts to involve disadvantaged business enterprises in their organization?
 - p. Does the record of the proposer demonstrate that they have a practice of soliciting interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the subcontract? The proposer should routinely determine with certainty if DBEs are interested by taking appropriate steps to follow up initial solicitations.



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- q. If the proposer is a Union Contractor, do they waive the union requirement for DBE firms or clearly outline union requirements?
- r. Does the proposer reject the bid of a DBE because its quotation for the work was not the lowest received?
- s. Does the proposer invite DBE subcontractors whose bid submission was incorporated into the prime's submittal to attend the pre-construction meetings.
- t. Does the proposer negotiate with DBE firms in a way that avoids bid shopping or the appearance thereof.

If our office provides an opinion about the appropriateness of a relationship, we want to advise that even if the relationship appears appropriate on its face, dealings between prime contractors and the DBE during the implementation of the contract could still run contrary to the independence requirements of the DBE rule. Please always contact the NDOT External Civil Rights Division to avoid any unintended consequences of your actions or inactions... remember communication is key.