

Network for Success

# Local Programs Workshop



**BREAKOUT SESSION – GROUP 4**  
**Track A – Delivery/Construction**  
**Thursday, September 26, 2013**  
**1:00pm - 2:30pm**

Network for Success

# Local Programs Workshop



## Aspects of a Good Contract

**September 26, 2013**

**Jamie Surface**

**Construction Division**

# *Aspects of a Good Contract*

## The Contract Life Cycle

1. Project Development – preliminary engineering
2. Preparing Bid Documents
3. Advertisement
4. Execution and Construction
5. Completion

# *Aspects of a Good Contract*

## Project Development

- **Set “Scope” correctly**
  - **Avoid “as directed by the Engineer”**
  - **Avoid “approvals during construction phase”**
  - **Use generally accepted Specifications and Standards when possible and applicable**
  - **Use VDOT standard items if possible**
  - **Use “unit pricing” (vs. lump sum) whenever possible**
- Good Engineering is cheaper than Construction**

# Poorly Written Scope

**“Design and Construct Four Leg Roundabout  
with a design ADT of 4500 VPD”**

**Make sure you're not going to create issues with an incomplete scope.**



# Poorly Written Specification

**“Provide a boat with gasoline motor not to exceed 14 feet in length.”**

**You might end up with this...**



**Or this!**



# *Aspects of a Good Contract*

## Bid Documents

- **Remove as much risk as possible**
- **No “negotiation” clauses**
- **Buy America**
- **Davis Bacon – Since MAP21 all projects apply**
- **Estimate – Use a Rational / Realistic / Defensible estimate.**

**Good Engineering is cheaper than Construction**

# ***Aspects of a Good Contract***

## **Bid Documents**

- **Prequalification should be done prior to receipt – avoid min. experience**
- **Know the VA procurement code – Construction has special aspects**
- **Have a hierarchy of documents – there is a good one in the VDOT specs**
- **Avoid sole source products / proprietary products**
- **If you allow additives / alternates, you must accept them in order**

# *Aspects of a Good Contract*

## Advertisement

- **Two approvals – first to advertise, second to award**
- **Plan to advertise at the right time of the year**
- **Advertise for not less than 21 days**
- **Revisions must be posted 10 days prior to receipt of bids**

# ***Aspects of a Good Contract***

## **Execution and Construction**

- **No negotiating. The contract is awarded to the lowest Responsible and Responsive Bidder**
- **Two approvals – first to advertise, second to award**
- **Tie the Contract to the Bid Documents**

**Be ready to provide justification on bids  
over the estimate.**



# *Aspects of a Good Contract*

## Execution and Construction

- **Plan for inspection staff – Use someone with experience for the type of work you're doing.**
- **Document, Document, Document**

# *Aspects of a Good Contract*

## Completion

- Review lessons learned (good, bad and ugly)
- Use these lessons learned to improve the next project
- Have a ribbon cutting

# *Aspects of a Good Contract*

**A well thought out, well engineered, well written contract will help you avoid this scenario.**



# Questions?



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# Local Programs Workshop



## DBE Program Goal Setting and Good Faith Efforts

September 25, 2013

Shay Ponquinette

Acting Division Administrator

Civil Rights Division

# Who Must Have a DBE Program?

**49 Code of Regulations (CFR) Part 26**

**All FHWA recipients receiving funds and let DOT-assisted contracts must have a DBE Program**

**US DOT**

**\$**

**FHWA**

**\$**

**Virginia DOT**

**\$**

**Local Government**

# **DBE Program Requirements**

## **Purpose of the DBE Program**

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs**
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts**
- To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law**

# DBE Program Requirements

## DBE Program Requirements

- **To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs**
- **To help remove barriers to the participation of DBEs in DOT-assisted contracts**
- **To assist the development of firms that can compete successfully in the marketplace outside the DBE program**
- **To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs**

# DBE Program and Goal Setting

## National Goal Requirement

- The statutes authorizing the DBE Program provide that not less than 10 percent of authorized funds are to be expended with DBEs.
- This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.
- The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

# Goal Setting

## VDOT Overall DBE Goal

**Overall Goal**

**Achieved**

**2011**

**9.21%**

**10.06%**

**2012**

**9.21%**

**8.40%**

**2013**

**9.21%**

**10.54% (3/13)**

# DBE Goal Setting

## Project Goal Setting

- **Detail Estimate**
  - Location of project by coordinates
  - Estimated cost of each item to be constructed
  - Total dollar value of the project
- **Verify the location of the project**
- **Verify the names and locations of DBEs who are currently certified and are ready, willing, and are able to perform work on the contract**
- **Analyze the estimate for items potentially constructible by DBEs**

# DBE Goal Setting

## Guidelines for Determining DBE Goals on Projects

- Calculate the total value (sum) of the selected items determined constructible by DBEs
- Calculate the total percentage of the gross (unadjusted) DBE goal for the project

**Example: Total Dollar Value of Selected Items = DBE  
Goal Percentage**

**Total Value of the Contract**

# DBE Goal Setting

## Guidelines for Determining DBE Goals on Projects

- **Analyze the results of this calculation considering:**
  - On-going projects approaching completion, newly awarded projects, currently advertised projects, and projects proposed for advertisement
  - Historical performance of prime contractors on similar projects
  - Type of work activities considered
  - Cost (dollar value) of the work activities
  - Availability of DBEs who are ready, willing, and able to bid on the project

under consideration for goals
- **Adjust the goals in accordance with the results of the aforementioned analysis**

# Failure To Meet DBE Goal Requirements

- **The failure of a bidder to submit the required documentation within the timeframes specified within the Special Provision for 107.15 – Use of Disadvantaged Business Enterprises may be cause for rejection of that bidder’s bid.**
- **In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, the Locality will determine if the bidder’s efforts were adequate good faith efforts.**

# Failure to Meet DBE Goal Requirements

- **Where the Locality determines upon initial review that the bidder has failed or appears to have failed to meet the requirements of the Contract Goal and adequately document that it made a good faith effort the Locality shall notify the firm of the initial determination and be offered the opportunity for administrative consideration before VDOT rejects the bid as non-responsive.**
- **The bidder must request reconsideration in writing within (5) days of receipt of notification by the Locality and shall be given the opportunity to discuss the issue and present its evidence in person to the Administrative Reconsideration Panel.**

# **Failure to Meet DBE Goal Requirements**

**If the lowest bidder is rejected for failure to submit required documentation, the Locality may either award the work to the next lowest bidder, or re-advertise and construct the work under contract or otherwise as determined by the Commonwealth Transportation Board.**

# Good Faith Efforts Guidelines

**The following information is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.**

# Good Faith Efforts Guidelines

**Include the following completed forms:**

- ☑ Form C-111 – Minimum DBE Requirements**
- ☑ Form C-112 – Certification of Binding Agreement**
- ☑ Form C – 48 - Subcontractor/Supplier Solicitation and Utilization Form**
- ☑ Form C-49 – Summary of GFE Documentation**
- ☑ Copy of the Request for Bid Solicitation to DBEs**
- ☑ Solicit through reasonable and available means, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised.**

# Good Faith Efforts Guidelines

- ☑ Solicit DBEs no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation.**
- ☑ Follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation form, C-49.**
- ☑ Select portions of the work to be performed by certified DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items completely or with its own forces.**

# Good Faith Efforts Guidelines

- Provide interested certified DBES with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation.
- Provide evidence of names, addresses, and telephone numbers of DBEs that were considered for the solicitation; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting, and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work.

# Good Faith Efforts

- For DBE bids declared non-competitive, include copies of DBE and non-DBE bid quotes. DBE quotes may be rejected as non-competitive if the DBE sub's quote is considered excessive and verified by supporting documentation. The prime must contract with the non-DBE sub when declaring a DBE firm non-competitive.
- Offered assistance to DBEs in obtaining bonding, lines of credit, or insurance.
- Offered assistance to DBEs with information about securing equipment, supplies, materials, or related assistance/services.

# Good Faith Efforts

**☑ Effectively utilized the services of appropriate personnel from VDOT, the Virginia Department of Minority Business Enterprise (VDMBE), the Metropolitan Washington Airports Authority (MWAA), and other organizations in the recruitment and utilization of qualified DBEs.**

# How To Locate DBE Firms

The Virginia Department of Minority Business Enterprise, [www.dmb.e.virginia.gov](http://www.dmb.e.virginia.gov)



- ▶ About Us
- ▶ SWaM Certification
- ▶ DBE Certification
- ▶ SWaM Vendors Search
- ▶ DBE Vendors Search
- ▶ SWaM Purchasing and Expenditure Reports
- ▶ Programs
- ▶ Special Request Forms
- ▶ Bid and Business Opportunities
- ▶ Reports
- ▶ Frequently Asked Questions
- ▶ Links

### Disadvantaged Business Enterprise (DBE)

The Virginia Unified Certification Program includes two certifying agencies: Department of Minority Business Enterprise (DMBE) and the Metropolitan Washington Airport Authority (MWAA). Federal DBE certification by either agency is fully accepted throughout Virginia.

- To search for DBE vendors certified by DMBE and MWAA, please [click](#) here.
- To view the Vendor Directory of DBEs certified by DMBE and MWAA, please [click](#) here.

**What's Hot**

- [SWaM Certification Application Status](#)
- [SWaM Vendor Directory](#)
- [DBE Certification Forms and Process](#)
- [DBE Vendor Directory of VA Unified Certification Program](#)



### Disadvantaged Business Enterprise (DBE)

Search by:

- Company Name
- NAICS Code/Description
- Zip & NAICS Code

NAICS Code:  
(At least 3 digits are required.)

Submit

OR

NAICS Description:  
(At least 3 characters are required.)

Submit

File Edit View Favorites Tools Help

bing News Hotmail Autofill 76°F Stocks Video Private

Skip to Content | Online Services | Comm Search Ask AVERY

★ Favorites All State Staff VDOT Staff eVA https--messagecenter.mci.c... logo3w[1].png NIMS(FEMA Cert.) Online Email Marketing Soft... Payable Time Payable Time (2) Payable Time (3)

Disadvantaged Business ... Radisson Freehold Wireless ...

Federal Type	Certifying Agency	Cert #	Company Name, Mailing Address and Contact	Description of Service	DBE/ACDBE
DBE/MBE	DMBE	000466	B WILLIAMS RESOURCES, INC. P. O. BOX 638 DANTE VA 24237 Contact: <a href="#">THOMAS C. WILLIAMS</a> Phone: (276)495-8235 Fax: (276)889-5043	<b>NAICS Code and Description</b> 561730: LANDSCAPING SERVICES 484220: DUMP TRUCKING (E.G., GRAVEL, SAND, TOP SOIL) 237310: HIGHWAY CONSTRUCTION 238910: EXCAVATION CONTRACTORS	DBE
DBE	DMBE	689369	CAPTAIN CONSTRUCTION & CONCRETE, INC 4301 WALDOR DRIVE RICHMOND VA 23234 Contact: <a href="#">RAMONA COLEMAN</a> Phone: (804)833-1787 Fax: (804)269-4550	<b>NAICS Code and Description</b> 237110: WATER AND SEWER LINE AND RELATED STRUCTURE CONSTRUCTION 237310: CONCRETE PAVING, HIGHWAY CONSTRUCTION 238110: CONCRETE FINISHING 238140: CONCRETE BRICK LAYING 238190: ERECTION & DISMANTLING, POURED CONCRETE FORM 238910: CONCRETE BREAKING & CUTTING FOR DEMOLITION 238990: CONCRETE PAVING, RESIDENTIAL AND COMMERCIAL DRIVEWAY & PARKING AREA 484220: MATERIAL HAULING 488490: SNOW REMOVAL 561990: FLAGGING SERVICES	DBE
DBE/MBE	DMBE	000610	DEVCON CONTRACTING, INC. PO BOX 34363 RICHMOND VA 23234 Contact: <a href="#">DEREK FRANCIS</a> Phone: (804)400-6635 Fax: (804)745-1230	<b>NAICS Code and Description</b> 484110: TRUCKING, GENERAL FREIGHT, LOCAL 237310: ASPHALT PAVING (I.E., HIGHWAY, ROAD, STREET, PUBLIC SIDEWALK), HIGHWAY CONSTRUCTION, ROAD CONSTRUCTION	DBE
DBE/MBE	DMBE	000640	MARTINS CONSTRUCTION CORPORATION 210 LITTLE FALLS STREET, SUITE 300	<b>NAICS Code and Description</b> 237310: HIGHWAY, STREET, AND BRIDGE CONSTRUCTION 237110: WATER AND SEWER LINE AND RELATED STRUCTURES	DBE

# **For Additional Information or Assistance**

**Shay Ponquinette**

**804-786-2935**

**[Shay.ponquinette@vdot.virginia.gov](mailto:Shay.ponquinette@vdot.virginia.gov)**



Network for Success

# Local Programs Workshop



## Steps to a Successful Locally Administered Construction Project

September 25, 2013

Robbie Williams, P.E., PMP

District Construction Engineer

VDOT– Salem District

# What are our responsibilities during construction?

- **Localities are required to provide sufficient construction inspection to ensure project is constructed in accordance with contract specifications & plans by 23 CFR 635.105(c)**
- **Localities are responsible for compliance with all applicable federal, state, and local laws and regulations, including, but not limited to, occupational health and safety, environmental compliance, and equal employment (LAP Manual, Chapter 13).**

**\*Applicable for all federal-aid projects and all projects to be maintained by VDOT.**

# **What are our responsibilities during construction (cont.)?**

## **Local Public Agency (LPA) Responsibilities:**

- **Fully responsible for administration**
- **Full time local government employee and a licensed engineer**
- **Provide adequate construction inspection**
- **Maintain sufficient documentation**

**Source: (VDOT LAP Manual)**

# What are our responsibilities during construction (cont.)?

- **VDOT has an oversight role in construction when state or federal funds are being utilized by 23 CFR 635.105 (a)**
- **“For federal-aid projects, VDOT is not relieved of oversight responsibility for the project’s construction, even when administered by an LPA on roads maintained by the LPA.” (LAP Manual, Chapter 13, pg 15).**

# What are our responsibilities during construction (cont.)?

## VDOT Responsibilities:

- Assign a VDOT employee responsible for oversight and a primary contact
- Establish the level of oversight
- Provide LPA with an estimate of oversight costs
- Provide FHWA reasonable assurance that all federal requirements are met upon acceptance of the project

Source: (VDOT LAP Manual)

# Oversight and Risk Management

**Need to adequately assess the risk involved with the project and tailor oversight to the project circumstances**

- 1. Establish expectations up front**
- 2. Outline roles & responsibilities**
- 3. Identify risk**
- 4. Ensure open lines of communication**
- 5. Establish a “chain of command” for decision making**

**Remember.....Only People Get Results!**

# What does construction success look like?

**Projects that are completed:**

**Safely**

**On-Time**

**On-Budget**

**Quality**

**Environmentally Compliant**

**(The Hand of Construction Project Delivery)**

# **Safety - Employees and Project Personnel**

- **Contractor shall comply with the Virginia Occupational Safety and Health Standards.**
- **Prohibit workers employed from working under conditions that are unsanitary, hazardous, or dangerous to their health or safety.**
- **Comply with safety rules listed under 107.17 of the 2007 Road and Bridge Specifications unless otherwise determined unsafe or inappropriate in accordance with OSHA regulations.**
- **Violations brought to the contractors attention by the engineer or any other person shall be immediately abated.**

# Work Zone Safety

- **Contractor shall prosecute work so as to avoid obstructions to traffic to the greatest extent practicable.**
- **Contractor shall provide for the safety and convenience of the general public and residents along the roadway and the protection of persons and property.**
- **Work shall be scheduled and performed so as to provide minimum interference with and maximum protection for traffic.**
- **Compliance with the Virginia Work Area Protection Manual (August 2011)**

**Source: VDOT 2007 Road and Bridge Specifications**

# Work Zone Safety

- **Contractor shall provide one person on-site with the Department's Intermediate Work Zone Traffic Control certification or ATSSA Traffic Control Supervisor (TCS) certification.**
- **Contractor shall provide one person on-site with the Department's Basic Work Zone Traffic Control certification for each operation involving installation, maintenance, or removing traffic control devices.**

**Source: (VDOT 2007 Road and Bridge Supplemental Specifications)**

# On-Time delivery

- 1. Contract Time Determination (CTD)**
- 2. Preconstruction conference**
- 3. Baseline schedule due 7 days prior to beginning work (VDOT R&B). LPA to provide schedule to VDOT within 15 days of preconstruction.**
- 4. Early start & continuous prosecution**
- 5. Monitor work and schedule**
- 6. Regularly scheduled progress meetings and weekly updates of planned activities for the subsequent week**
- 7. Partial acceptance and development of punch lists in advance of final acceptance**

# On-Budget delivery

- **Earnings Schedule**
- **Track and anticipate work orders and material escalation adjustments (if applicable)**
- **Local certification of each monthly payment voucher (VDOT LAP Manual)**
- **Quarterly Dashboard update of expenses to date required (VDOT LAP Manual)**

# Quality

## VDOT's Seven Rights (7R's) of Quality Control:

The Right Material

Put in the Right Way

At the Right Time

In the Right Place

In the Right Quantities

Having the Right Documentation

Then, making the Right Payment to the Contractor.

# Four Step Inspection Procedure

**Pre-start planning meeting:** As soon as practical after grading operations have been completed, the Inspector, Construction Manager, District Traffic Engineer, and the Federal Highway Administration's Area Engineer (Federal oversight only) should review the designed location of guardrail and end sections to determine if any changes to the designed location are required prior to installation. The Inspector should also try to have the guardrail installation foreman attend. Field changes must be approved by the Responsible Charge Engineer or Design Engineer of Record. Review and have on site the manufacturer's installation instructions.

**Start:** The Inspector should verify that the Contractor has a trained installer on the project that has successfully completed the Guard Rail Installation, Inspection and Repair Training (GRIT) and has a current Verification of Qualification card. Verify that guardrail materials have been approved.

**Inspection:** Verify alignment, proper grade and heights, proper laps, post spacing, fasteners, and galvanization.

**Final Inspection:** Verify that all installations have been accomplished in accordance with the plans and specifications.

**Documentation Required:** The Inspector is to measure and record in the project diary the length of each line of guardrail and median barrier measured to the nearest linear foot. Counting the number of rails and multiplying by the length of rail is a good double check. Make sure that the rail included in the fixed object attachments or end treatments as shown in the standards are paid for appropriately. A copy of all required Certificates of Compliance as outlined in the *Manual of Instruction - Materials Division* is to be placed in the project records upon receipt. Retain a copy of the manufacturer's recommended installations instructions.

# Review Questions

- **Is the substructure removed down to stream bed elevation or at least 2' below natural ground or finished grade of an embankment which is to remain in place, including any part or piling that will interfere with new construction?**
- **Has the Contractor submitted for the Engineer's approval a method for dismantling structures to be retained by the Department that will preserve the existing condition of materials?**
- **Have units been match marked for re-erection according to an approved diagram provided by the Department?**
- **Is concrete not removed by blasting or other methods which could damage any portion of the structure that will remain in place?**
- **Do pneumatic hammers weigh no more than 90 pounds for widening work or 30 pounds for deck repair work?**
- **Where permitted, are tractor-mounted hammers being used in accordance with this section?**

# Review Questions continued

- **Have all disturbed areas been uniformly graded to natural ground contours that will facilitate drainage and prevent impoundment of water?**
- **Has the contractor received written approval from the Engineer to use hydraulically actuated, jaw type, concrete crushers for parapet removal?**
- **Has the removal of concrete parapets on prestressed concrete slab spans or pre-stressed concrete box beams been performed in accordance with this section?**
- **When demolition operations involve a Type B structure (as defined in Section 411), has an environmental plan been submitted in accordance with Section 411.08?**
- **Has contractor complied with this section when contractor is not required to have an environmental plan?**
- **Has the contractor submitted for review a worker health and safety plan in accordance with this section?**

# Environmental Compliance

- **Strict compliance with all permit conditions**
- **Review permits carefully and suggest creating an environmental notebook**
- **Required documentation and postings**
- **VA Stormwater Management Permit (VSMP) and related documents**
- **Erosion & Siltation compliance and monitoring**

# Additional Guidance

- **Guide for Local Administration of VDOT Projects - Go to:** <http://www.virginiadot.org/business/local-assistance.asp>, see *Recent Updates*
- **Road and Bridge Specifications - Go to:** <http://www.virginiadot.org/business/const/default.asp>, see *Manuals, Books, Guides, and Forms*
- **2011 Virginia Work Area Protection Manual - Go to:** <http://www.virginiadot.org/business/const/default.asp>, see *Manuals, Books, Guides, and Forms*
- **Materials Manual of Instructions - Go to:** <http://www.virginiadot.org/business/const/default.asp>, see *Manuals, Books, Guides, and Forms*
- **Construction Resource Guidebook – Go to:** <http://www.virginiadot.org/business/const/default.asp> see *Manuals, Books, Guides, and Forms*

# Discussion