

DBE OPEN-ENDED PERFORMANCE PLAN (OEPP)
FOR LOR-90-10.76, PID107714; PROJECT (24)3003

A. GENERAL

The Department will provide the DBE goal in the Department-issued Project Proposal. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.

~~A. DBE OPEN-ENDED PERFORMANCE PLAN – GENERAL~~

The Project will utilize a DBE Open-Ended Performance Plan (OEPP).

The OEPP will demonstrate the Contractor's plan for ~~bringing on~~contracting DBEs throughout the life of the project to meet the DBE goal. The OEPP shall include the Contractor's plan for ongoing DBE ~~solicitations~~solicitations, DBE outreach, and DBE contracting efforts after contract execution. The OEPP shall demonstrate reasonable approaches and methodologies to meet all project DBE goals.

The Bidder will not submit anticipated DBE Firms at time of bid; however, the awarded Contractor shall make and document ongoing efforts to meet the DBE goal.

~~A DRAFT OEPP shall be submitted as part of the Intermediate Technical ProposalAs per the submission requirements in the Project's Instructions to Offerors for a Request for Proposals (RFP) Section 3. Review comments will be provided for ITO), the Shortlisted Offeror Offerors shall furnish a draft OEPP to submit a revised OEPP with the Final Technical Proposal and Price Proposal in accordance with the ITO. The the Department shall review the apparent successful Bidder's OEPP submittal(s). The Department's approval of an OEPP is required prior to contract execution.~~

~~The DBE goal shall be found in the Project's Proposal. The DBE goal of a project is stated as a percentage of the contract. In the event the contract amount increases or decreases, the actual dollar amount of the DBE goal for the project may increase or decrease accordingly.~~

~~The successful Bidder shall provide progress updates, as required per this note, for the durationSection 6.3 of the Project.I TO. The Department will monitor goal attainment throughout the life of the projectreview the draft OEPP submittals per the ITO. The apparent successful Shortlisted Offeror shall furnish the final OEPP to the Department after the Technical & Price Proposals Results Announced date per Section 8.7 of the ITO.~~

~~B. DBE OPEN-ENDED PERFORMANCE PLAN – TECHNICAL REQUIREMENTS~~

B. DBE OPEN-ENDED PERFORMANCE PLAN REQUIREMENTS

The OEPP shall describe and demonstrate the following:

1) OEPP Part 1: DBE Utilization Commitment

Provide a dated commitment letter on the Bidder's letterhead, signed by an officer of the Company, stating the following:

“(date)

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OEPP and DBE Commitment Certification

(your company) hereby commits to making all Good Faith Efforts, including those efforts outlined in this DBE Open-Ended Performance Plan (OEPP), to meet the Project's identified DBE Goals.

(your company) hereby commits to negotiating and contracting in Good Faith with each DBE to allow economically disadvantaged individuals a fair opportunity to compete for Work on the Project.

This OEPP is being provided in Good Faith and demonstrates the intent of (your company) and the DBT's Project management's intent DBT project management team to cooperate fully in meeting our requirements of the applicable DBE regulations and the requirements within the DBE OPEN-ENDED PERFORMANCE PLAN (OEPP) specifications for the Project."

(signatory name)

(signatory signature)"

2) OEPP Part 2: DBE Utilization Manager

Identify the DBE Utilization Manager. The DBE Utilization Manager ~~is~~ shall be responsible for DBE outreach, monitoring DBE utilization, DBE utilization reporting, DBE compliance, and updating the OEPP. The OEPP shall include the DBE Utilization Manager's resume. The DBE Utilization Manager shall be employed by the Contractor and empowered to represent the Contractor in DBE contractual issues. The DBE Utilization Manager is a Key Personnel and shall report to the Contractor Project Manager or higher officer within the Contractor's organization.

Minimum Requirements:

~~Five~~ (Minimum requirements of the DBE Utilization Manager include:

- a. ~~5~~ years minimum of demonstrated experience with a background and understanding of DBE, Commercially Useful Function (CUF), Federal ~~Contract Compliance~~ contract compliance requirements, and EEO requirements.
- b. Experience with the management of federally funded projects, preferably transportation with ~~preferably~~ DBE outreach, DBE recruitment, and DBE development.
- c. Experience with establishing DBE relationships and/or ~~currently have~~ previously established relationships with the regional DBE community.

3) OEPP Part 3: DBE Goal Attainment Reporting

Provide the Contractor's management methodology for implementing, managing, and reporting on DBE goal attainment.

Minimum ~~Requirements~~ requirements include:

- a. Identification of supporting personnel and their roles assisting the DBE Utilization Manager in overseeing the OEPP. This shall include identification of direct Project ~~Personnel~~ personnel responsible for Project DBE oversight, key ~~Company Officers~~ company personnel engaged in identifying opportunities for DBE subcontracting, performing outreach for DBE subcontracting opportunities, and key Designer personnel ~~of the Designer~~ engaged in DBE Outreach (if applicable for DBE goal attainment).
- b. Descriptions of internal company processes, software, or other tools utilized to track DBE utilization on the Project, and a description of how that information will be combined and organized for reporting.

- c. Template of an intended OEPP Monthly Report to the Department (see section D.1 of this Proposal Note).

4) OEPP Part 4: Good Faith Efforts (GFEs)

Describe and provide the Contractor's methodology for documenting ~~DBE goal~~ Good Faith Efforts (GFEs) to achieve the DBE goal throughout the life of the ~~project~~Project.

Minimum ~~Requirements~~requirements include:

- a. Description of documentation processes of all written solicitations to DBE firms, even if unsuccessful.
- b. Description of documentation processes for all phone logs of solicitation communications with DBE firms.
- c. Description of documentation processes of all written quotes received from DBE firms and communication with each DBE firm regarding the outcome of their submitted quote.
- d. Description of documentation processes and reasons when a non-DBE firm was selected over a DBE firm for solicited work on the contract.
- e. Description of documentation processes when DBE committed work is non-performed by the Department.

5) OEPP Part 5: Non-Discrimination, Affirmative Action, and EEO

Provide the Contractor's plan for ensuring compliance with the non-discrimination provisions and the affirmative action and equal employment opportunity provisions.

Minimum ~~Requirements~~requirements include:

- a. Copies of the Contractor's and Lead Designer's non-discrimination policies, and affirmative action and/or equal opportunities policies.
- b. The intended internal investigation processes to be followed if a complaint is issued, a notification from a governing body is received, or if any a complaint or violation is identified.
- c. The intended reporting mechanisms to the Department's Office of Business & Economic Opportunity and Office of Civil Rights Compliance of any complaint or violation.

6) OEPP Part 6: DBE Prompt Payment

Provide the Contractor's plan for ensuring DBE prompt payment.

Minimum ~~Requirements~~requirements include:

- a. Methods to identify DBE Work on Monthly Invoices.
- b. Methods to monitor Payments from the Department which should be made to DBEs.
- c. Methods to ensure time tracking of the Department payments ~~vs~~made to the Contractor versus relevant Contractor payments made to DBEs.

7) OEPP Part 7: DBE Contracting Notification

~~Provide~~Describe the Contractor's plan for providing the Department with at least 24-hour notice prior to DBEs performing Project related Work.

Minimum ~~Requirements~~requirements include:

- a. Project-level notification processes for notice of construction work.
- b. Lead Designer notification processes of DBE design work, including physical location of the firm performing the design work.

8) OEPP Part 8: Commercial Useful Function

Provide the Contractor's plan for ensuring Commercially Useful Function (CUF) for all DBE work performed.

Minimum ~~Requirements~~ requirements include:

- a. Methods to ensure DBEs are managing and supervising their own work.
- b. Methods to ensure DBEs are purchasing their own material.
- c. Methods to ensure DBEs are employing their own labor and owning/renting their own equipment.

9) OEPP Part 9: DBE Work Package Notification

Provide the Contractor's plan for ensuring DBEs are sufficiently informed in advance on DBE contracting requirements and methods to determine equitable selection.

Minimum ~~Requirements~~ requirements include:

- a. Methods to identify potential work packages and the intended ~~timing of~~ packages identification ~~lead-times~~.
- b. Intended communication methods with known DBEs to solicit pricing. Methods shall be in a manner which is easily and equitably accessible for DBEs.
- c. Intended communication and outreach methods for potential DBEs. Methods shall be in a manner which is easily and equitably accessible for DBEs.
- d. Description of the criteria used in the selection of DBE subcontractors.

10) OEPP Part 10: DBE Planned Utilization Forecast

Provide the Contractor's intended forecast of DBE utilization for the duration of the Project.

~~Minimum Requirements:~~

Minimum Requirements include:

- a. Anticipated overall value of Work to be performed corresponding to Month and Year and the subsequent cumulative value. Note: This should be a reasonable Project cost curve forecast based on the best information available at the time of development, but the Project cost curve forecast will not be used by any party except for the purposes within this note.
- b. Anticipated DBE subcontracting payments corresponding to Month and Year and the subsequent cumulative value of DBE payments.
- c. A linear combined graph ~~of showing~~ the cumulative value ~~information provided of the Work (as described in (a))~~ and the cumulative value of DBE payments (as described in (b)). Format the graph ~~so that the to~~ include:
 - i. a Y-axis corresponds to on the left of the graph for the "Cumulative Value and of the Work"
 - ii. a second Y-axis on the right of the graph for the "Cumulative Value of DBE Payments"
 - iii. the X-axis corresponds corresponding to "Time;" (number of months).

Add Note: Include appropriate labels to clearly demonstrate the intent of the graph.

~~Note: The graph is to clearly depict demonstrate payment trends for the Project cost curve and in comparison with the DBE subcontracting payments demonstrating subcontracts payment trends curve.~~

~~e.d. Anticipated work types and estimated work type value to be performed by DBE subcontracts and estimated work type value corresponding to Month and Year.~~

~~d.e. DBE subcontract value yet to be determined: (unknown work type/firm).~~

Note: At initial submission, the cumulative value of (b) will be equivalent to (e).

~~After Contract execution, the OEPP can only be revised with concurrence by the Department's Office of Business & Economic Opportunity.~~

If the Bidder is also a certified DBE firm, the requirement to complete an OEPP as set forth remains. In this instance, however, the certified DBE Bidder would not need to submit a DBE Affirmation Form (section E) for the work it is planning to self-perform to meet the goal. ~~the~~The Department will consider the submission of the bid as the certified DBE Bidder's written confirmation that it is participating in the contract. However, a DBE Affirmation Form must be submitted for all other DBE firms that are being utilized toward the DBE goal.

If the Bidder is a Joint Venture, the Joint Venture will only be considered a certified DBE firm if the Joint Venture itself has been certified. The Joint Venture may, however, utilize a certified DBE firm that is also a partner in the Joint Venture to meet the DBE goal. The certified DBE Firm/Joint Venture Partner, however, does not need to submit a DBE Affirmation Form for any work that the certified DBE Firm/Joint Venture Partner is going to perform to meet the goal. the Department will consider submission of the Joint Venture's bid as the certified DBE Firm/Joint Venture Partner's confirmation that it is participating in the contract.

~~C. DBE OPEN ENDED PERFORMANCE PLAN – DBE AFFIRMATIONS & TERMINATIONS~~

C. DBE OPEN-ENDED PERFORMANCE PLAN: POST-AWARD REQUIREMENTS

Provide

~~The awarded Bidder shall provide regularly occurring updates concerning as described in the status of DBE Contracts, status of DBE contracted work expansion, reductions, following sections and & terminations. provide documentation as required and requested to substantiate updates.~~

The Department will monitor goal attainment throughout the life of the Project.

Post award ~~affirmations, termination, and contract reduction~~ requirements include:

1) DBE Affirmations AFFIRMATION

After award of the design-build contract, ~~the Contractor shall~~ submit all executed DBE subcontracts to the Department for review within ~~seven~~ (7) calendar days from the date of a signed DBE subcontract. ~~The Contractor shall ensure~~ Ensure that all subcontracts or agreements with DBEs require that the subcontract and all lower tier subcontractors be performed in accordance with this Proposal Note.

~~The Contractor shall ensure~~ Ensure the DBE firms affirm their participation in the Project within seven (7) calendar days from the date of a signed DBE subcontract using the DBE Affirmation Form below. ~~The Contractor shall submit~~ Submit a separate DBE Affirmation Form for each DBE firm utilized for

the DBE goal. The DBE Affirmation Form is written confirmation from each DBE firm that it is participating in the contract.

~~The Contractor shall utilize~~ Utilize the DBE Affirmation Form located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-affirmation>

~~https://resources/pn-013-affirmation~~

The dollar amount on the DBE Affirmation Form must match the amount within the subcontract. If the dollar amount does not match, the Apparent Low Bidder/Awarded Contractor shall utilize the Request for Consent to Terminate/Reduce a DBE Commitment process located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-termination>

~~https://resources/pn-013-termination~~

The affirmed value shall be included in the OEPP Monthly Report (see Section D.1 a.i).

~~1) DBE Reductions/Underruns/Terminations/Good Cause~~

For Reference Only

2) The Awarded Contractor must DBE REDUCTIONS/UNDERRUNS/TERMINATIONS/GOOD CAUSE

Do not terminate a DBE or any portion of its agreed-upon activities as listed on DBE Affirmation Forms (including subcontracting, services, trucking, and material supply) without the Department's prior written consent, unless the Department causes the termination or reduction. A termination includes any reduction or underrun in DBE activities not caused by a material change to the prime contract by the Department. This requirement applies to instances that include, but are not limited to, when ~~the Awarded Contractor seeks~~ seeking to perform activities indicated on approved DBE Affirmation Forms with ~~its own~~ prime contractor forces or those of an affiliate, a non-DBE firm, or another DBE firm.

No less frequently than biweekly, ~~the Awarded Contractor must~~ review ~~its~~ DBE Affirmation Forms for any potential reductions or underruns. All potential reductions or underruns must be disclosed along with their causes (i.e., triggering events or actions). When the Department agrees that a potential reduction's primary triggering event or action is a material change to the prime contract by the Department, ~~the Awarded Contractor must~~ update the DBE Affirmation Forms accordingly and send the revised forms to the Department and the affected DBE firms. ~~The Awarded Contractor will not need to replace this~~ Replacement of the DBE participation is not necessary.

When the Department agrees that ~~it~~ the Department is responsible for a potential reduction's primary triggering event or action, and this event or action was something other than a material change to the prime contract, ~~the Awarded Contractor may terminate~~ termination of the DBE without the Department's prior written consent: is permissible. In this case, ~~the Awarded Contractor must~~ report the termination and then update the DBE Affirmation Forms accordingly and send the revised forms to the Department and the affected DBE firms.

In all other cases, ~~the Awarded Contractor must~~ utilize the specific DBEs to perform the work and supply the materials as described on DBE Affirmation Forms unless the ~~Awarded Contractor obtains~~ the Department's written consent is obtained. Consent requests must be submitted utilizing the Request to Terminate/Reduce DBE Form located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-termination>

~~https://resources/pn-013-termination~~

Absent the Department's consent, the Awarded Contractor is not entitled to any payment for work or material unless it is performed or supplied as indicated on approved DBE Affirmation Forms.

Consent requests must be submitted utilizing the Request to Terminate/Reduce DBE Form located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/pn-013-termination>

~~https://resources/pn-013-termination~~

Part 1 of the Request to Terminate/Reduce DBE Form constitutes the Awarded Contractor's notice in writing to the DBE firm of the Awarded Contractor's intent to request to terminate and the reason for the proposed request. Upon completion of Part 1, the DBE has five days to respond by completing Part 2, advising the Department and the Awarded Contractor of the reasons, if any, why it objects to the proposed termination and why the Department should not approve the Prime Contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the Department may provide a response period shorter than five days. Part 3 of the form constitutes the Awarded Contractor's official request.

The Department will only provide written consent to terminate a DBE if the Department agrees, for reasons stated in its concurrence document, that the Awarded Contractor has good cause to terminate the DBE firm or any portion of its agreed-upon activities as listed on DBE Affirmation Forms (including subcontracting, services, trucking, and material supply).

Good cause to terminate a DBE includes the following circumstances:

- a. The DBE firm fails or refuses to perform the activities listed on its DBE Affirmation Form in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE firm to perform the activities results from the bad faith or discriminatory action of the Awarded Contractor;
- b. The DBE firm fails or refuses to meet the Awarded Contractor's reasonable, nondiscriminatory bond requirements;
- c. The DBE firm becomes bankrupt, insolvent, or exhibits credit unworthiness;
- d. The DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- e. The Department has determined that the DBE firm is not a responsible contractor;
- f. The DBE firm voluntarily withdraws from the ~~project~~Project and provides to the Department written notice of its withdrawal;
- g. The DBE firm is ineligible to receive DBE credit for the type of activity required;
- h. A DBE owner dies or becomes disabled with the result that the DBE firm is unable to complete its activity on the contract; and
- i. Other documented good cause that the Department determines compels the termination of the DBE firm.

Provided, that good cause does not exist if the Awarded Contractor seeks to terminate a DBE or any portion of its activity so that the Awarded Contractor can self-perform the activity or so that the Awarded Contractor can substitute another DBE or non-DBE participant.

B.D. ~~DBE OPEN ENDED PERFORMANCE PLAN~~ OPEN ENDED PERFORMANCE PLAN REQUIRED REPORTING

~~The awarded contractor shall be required to monitor~~Monitor and report the ongoing status of DBE ~~Outreach~~outreach, DBE contracting, and DBE performance. The awarded contractor shall perform the following ongoing documentation.

1) OEPP ~~Monthly Updates~~MONTHLY UPDATES

~~The awarded contractor shall~~Following award, submit an OEPP Monthly Report by the 10th day of the subsequent month: ~~throughout the life of the Project.~~

The OEPP Monthly Report shall contain the following:

a) OEPP Monthly Report – Part 1: Actions Summary

Provide a reporting period summary of actions taken or items of interest, including but not limited to the following.

- i. Cumulative number, value, listing of DBE contractors, and work type of DBE contracts executed towards participation. Note: DBE contracts must have a DBE Affirmation Form

signed by the DBE, submitted to the Department, and approved by the Department during the reporting period.

- ~~ii~~.iv. Number and type of subcontracting work packages identified during the reporting period.
- ~~iii~~.v. Number of DBE quotes, including DBE firm name and date solicited and subsequently received during the reporting period.
- ~~iv~~.vi. Number of and subsequent value of Request to Terminate/Reduce DBE Forms submitted, and number and value approved by the Department during the reporting period. Include DBE firm name.
- ~~v~~.vii. Violations or notification of any non-discrimination provisions, affirmative action, or equal employment opportunity provisions during the reporting period.
- ~~vi~~.viii. Any documented known CUF violations during the reporting period.
- ~~vii~~.ix. Proposed revisions to OEPP Parts 2-9 for the Department's approval. Note: It is the responsibility of the Awarded Contractor to advise the Department of any proposed changes to the OEPP.

b) OEPP Monthly Report – Part 2: Individual DBE Contract Summary

For each subcontracted DBE:

- i. Total value of the subcontract (original and current);
- ii. Total value of the subcontract less potential reductions or underruns, if any, with a clear description of the potential reductions or underruns and their causes, noting any pending and/or approved termination consent requests;
- iii. If current subcontract value is less than original, a clear description of the reason for the difference, noting any pending and/or approved termination consent requests, terminations where consent is not needed, and reductions/underruns caused by material changes to the prime contract by the Department;
- iv. Total invoiced by the DBE for the reporting period;
- v. Total payments paid to the DBE in the reporting period; and
- vi. For subcontracts with a difference in ~~invoice vs paid~~ invoiced payments versus actual payments, a clear description of the reason for the difference.

c) OEPP Monthly Report – Part 3: DBE Planned Utilization Update

Provide an update of the initial ~~TECHNICAL REQUIREMENTS~~ information in the OEPP Part 10 – DBE Planned Utilization Forecast requirements for the remainder of the Project. Update all information required for a. through e. with the following revisions:

- i. Update all graphs and information for the reporting period (and prior) with the actual payment received from the Department and DBE payments made by the Contractor.
- ii. Clearly indicate the reporting month within the graph
- iii. Update the DBE Planned Utilization Forecast for the remainder of the Project and fully

Fully describe any necessary substantive revisions in the expected reporting period's actual DBE payments as compared to the previously projected reporting period's DBE payments, and any substantive revisions to the DBE Planned Utilization Forecast for the remainder of the Project as compared to the previous reporting period.

At the request of the Department's Office of Business & Economic Opportunity and after transmittal of the OEPP Monthly Report to the Department, the DBE Utilization Manager will be required to meet with a representative from the Department's Office of Business & Economic Opportunity to discuss the Report.

The Department may withhold partial or full Estimates if the Contractor fails to submit an acceptable OEPP Monthly Report as determined by the Department.

2) ~~Ongoing Good Faith Efforts~~ ONGOING GOOD FAITH EFFORTS (GFEs)

~~The Contractor shall demonstrate that it is making~~ Demonstrate adequate ~~Good Faith Efforts~~ GFEs are being made to meet the goal if, ~~in the Department's judgement,~~ the OEPP Monthly Report demonstrates a potential of not trending towards successfully meeting the DBE contract goal, in the Department's judgement.

~~The Contractor shall produce~~ Produce the following documentation, or any portion thereof, within two (2) Working Days upon written request by the Department.

- a. All written quotes received from certified DBE firms;
- b. All written (including email) communications between the Contractor and DBE firms;
- c. All written pre-bid and post-award solicitations to DBE firms, even if unsuccessful;
- d. Copies of each non-DBE quote(s) when a non-DBE was selected over a DBE for work on the contract;
- e. Phone logs of communications with DBE firms;
- ~~1) All Outreach events and community events attended including dates.~~
- f. All Outreach events and community events attended including dates.

For ~~Reference~~ reference, the Department has provided ~~Good Faith Efforts~~ GFE Guidelines ~~Good Faith Efforts (GFE)~~ for Contractors located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/gfe-contractors>

~~https://resources/gfe-contractors~~

The Department will review the GFE documentation and issue a written determination on whether adequate ~~GFE's~~ GFEs have been demonstrated. If the Department determines that the Contractor has failed to demonstrate adequate ~~GFE's~~ GFEs to meet the goal, the Contractor will have an opportunity for administrative reconsideration.

As part of this reconsideration, the Contractor may provide written documentation or argument concerning the issue of whether it met the goal or made adequate ~~Good Faith Efforts~~ GFEs to do so. Such written documentation or argument must be provided to the Department, attention to the Deputy Director of the Division of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223, within two (2) business days of the Department's written determination that ~~GFE's~~ GFEs were not adequately demonstrated.

~~The Contractor may also~~ Also include in ~~their~~ the written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate ~~Good Faith Efforts~~ GFEs to do so.

The Department will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate ~~Good Faith Efforts~~ GFEs to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

~~C.E. DBE OPEN ENDED PERFORMANCE PLAN~~ END OF PROJECT GOOD FAITH EFFORTS (GFE) DOCUMENTATION

If the DBE contract goal established by the Department was not met, ~~the Contractor shall~~ demonstrate through documentation that ~~it has made~~ adequate ~~Good Faith Efforts GFEs were made~~ to meet the goal, even though ~~it failed/failing~~ in obtaining enough DBE participation to do so.

~~The Contractor shall complete~~ Complete the GFE Contractor Template and produce the following documentation, within seven calendar days upon written request by the Department.

- ~~2)1)~~ 1) All written quotes received from certified DBE firms pre-bid;
- ~~3)2)~~ 2) All written (including email) communications between the Contractor and DBE firms;
- ~~4)3)~~ 3) All written solicitations to DBE firms, even if unsuccessful;
- ~~5)4)~~ 4) Copies of each non-DBE quote(s) when a non-DBE was selected over a DBE for work on the contract;
- ~~6)5)~~ 5) Phone logs of communications with DBE firms;
- ~~f.a. All Outreach events and community events attended including dates.~~
- 6) All Outreach events and community events attended including dates.

The Department's GFE Contractor Template and GFE Guidelines for Contractors are located at:

<https://www.transportation.ohio.gov/programs/business-economic-opportunity/dbe/dbe-resources/gfe-contractors>

~~https://~~ contractors

The Department will review the GFE documentation and issue a written determination on whether adequate ~~GFE's~~ GFEs have been demonstrated. If the Department determines that the Contractor has failed to demonstrate adequate ~~GFE's~~ GFEs to meet the goal, the Contractor will have an opportunity for administrative reconsideration.

As part of this reconsideration, the Contractor may provide written documentation or argument concerning the issue of whether it met the goal or made adequate ~~Good Faith Efforts~~ GFEs to do so. Such written documentation or argument must be provided to the Department, attention to the Deputy Director of the Division of Chief Legal Counsel, 1980 West Broad Street, MS 1500, Columbus, Ohio 43223, within two (2) business days of the Department's written determination that ~~GFE's~~ GFEs were not adequately demonstrated.

The Contractor may also include in their written documentation a request for an in-person meeting to discuss the issue of whether it met the goal or made adequate ~~Good Faith Efforts~~ GFEs to do so.

The Department will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate ~~Good Faith Efforts~~ GFEs to do so. The result of the reconsideration process is not administratively appealable to the United States Department of Transportation.

~~D. DBE OPEN ENDED PERFORMANCE PLAN~~ SANCTIONS AND ADMINISTRATIVE

| REMEDIES

For Reference Only

F. SANCTIONS AND ADMINISTRATIVE REMEDIES

Failure by the Contractor to carry out the requirements of this Proposal Note, including (but not limited to)

- 1) the submission of adequate ~~Good Faith Efforts~~ GFEs to meet the goal for a project,
- 2) failure to submit DBE Affirmation Form(s)
- 3) failure to submit Request to Terminate/Reduce DBE Form(s) (as necessary) and/or
- 4) failure to meet the requirements of this note in a material way

is a material breach of the contract and may result in the issuance of sanctions as follows:

1st Tier: Letter of Reprimand

2nd Tier: Damages equivalent to the DBE shortfall

3rd Tier: If a pattern of paying damages persists or the Contractor has falsified, misrepresented, or withheld information, the Department can pursue other remedies available by law including suspension, revocation, and/or debarment.

Factors to be considered in issuing sanctions may include, but are not limited to the following:

- 1) The magnitude and the type of offense
- 2) The degree of the Contractor's culpability
- 3) Any steps taken to rectify.
- 4) The Contractor's record of performance on other projects including, but not limited to:
 - a. Annual DBE participation
 - b. Annual DBE participation on projects without goals
 - c. The number of complaints the Department has received regarding the Contractor.
 - d. The number of times the Contractor has been previously sanctioned by the Department.

Appendix - OEPP Part 10: DBE Planned Utilization Forecast – Example

To assist in demonstrating the DBE Planned Utilization Forecast, please see an Example Graph

Total Construction Value of the Work: \$32,500,000

DBE Goal: 6.0%

DBE Anticipated Payments based on DBE Goal: \$1,950,000

Project Start: February 2025

Project End: October 2026

The graph below reflects the chart as it would appear at the end of construction.

