

DBE/EDGE Goal Agreement Clauses, effective January 11, 2016

For Agreements selected after January 11, 2016, the Department will implement updated language for Agreements that include either Disadvantaged Business Enterprise (DBE) or Encouraging Diversity, Growth, and Equity (EDGE) Goals. Language is provided for both Participation and Development Goals.

Standard language that will be included in the respective Agreements are included as follows:

<i>Type of Goal</i>	<i>Page Number</i>
DBE Participation Goal	2
DBE Development Goal	5
EDGE Participation Goal	8
EDGE Development Goal	11

DBE PARTICIPATION GOAL CLAUSE

CLAUSE V - DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts which the Consultant enters into pursuant to this contract. The Consultant must use good faith efforts to include DBE subconsultants. Consequently, the requirements of Title 49 CFR Part 26 apply to this contract. The Consultant must ensure that the DBE subconsultant(s) is performing a "commercially useful function" as defined in 49 CFR 26.55.

At least *** percent (**%) of this contract shall be subcontracted to DBE firms who have been certified as a DBE by the Ohio Department of Transportation.

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

- (a) Prior to starting work, provide a written plan for DBE participation including a breakdown by PDP step if applicable (or similar breakdown by task), description of work to be performed by each DBE subconsultant, and projected percentage of DBE participation during each step of the work.
- (b) Provide an ongoing summary of DBE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.
- (c) Provide a quarterly report of the amounts actually paid to DBE subconsultants, and certification by the subconsultants of the amounts received.
- (d) Provide a written explanation if the level of DBE participation falls below the level stated in the DBE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Consultant will be required to establish good faith efforts (GFEs).

CLAUSE VI - PROCESS FOR ESTABLISHING GOOD FAITH EFFORTS

The Consultant must document the progress and efforts being made in meeting the goal for DBE participation. In the event the Consultant is unable to meet the DBE Goal placed on this project, the Consultant must demonstrate it made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. Such information needs to be submitted to the Administrator, Office of Small & Disadvantaged Business Enterprise, Division of Opportunity, Diversity & Inclusion, 1980 West Broad Street, MS: 4190, Columbus, Ohio 43223. The Department will determine whether the Consultant has made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. There will be no extension of time for the project granted if the Consultant wishes to avail itself of this process.

The Consultant may provide the following information and documentation to demonstrate GFEs:

- (a) Dollar value and % of DBE goal. Dollar value and % of the DBE goal shortfall.
- (b) Signed copy of each subcontract or purchase order agreement between the prime and DBE subconsultant utilized in meeting the contract goal.
- (c) Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with the DBEs.
- (d) Copy of dated written communication and/ or dated fax confirmation of DBEs that were not interested in providing services.
- (e) Documentation of all efforts to assign additional work to DBEs currently under subcontract, and if those efforts fail, efforts to secure additional DBE subconsultants, including copies of dated written communication and/ or fax confirmation of personal contact, follow up and negotiation with the DBEs.
- (f) Documentation of additional GFEs to meet the DBE subcontract goal, by looking beyond the items typically subcontracted or consideration of subcontracting items normally performed by the prime as a way to meet the DBE goal.

The Department will review the submitted documentation and issue a written decision within 10 business days. The Consultant may request administrative reconsideration within 14 days of being informed that it did not demonstrate a GFE. The Consultant must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, MS: 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Consultant did not document sufficient GFEs.

As part of this reconsideration, the Consultant will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate GFEs to do so. ODOT will send the consultant a written decision on reconsideration explaining the basis for finding that the Consultant did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

CLAUSE VII - SANCTIONS FOR FAILING TO DEMONSTRATE ADEQUATE GFE

The Ohio Department of Transportation may issue sanctions if the Consultant fails to comply with the contract requirements and/or fails to demonstrate the necessary GFEs.

The Ohio Department of Transportation may impose any of the following sanctions:

- (a) letter of reprimand;

- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension (consultant debarred from pursuing additional contracts).

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

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;
- (c) any steps taken to rectify the situation;
- (d) the Consultant's record of performance on other projects including, but not limited to:
 - (1) annual DBE participation over DBE goals;
 - (2) annual DBE participation on projects without goals;
 - (3) number of complaints the Ohio Department of Transportation has received from DBEs regarding the Consultant; and
 - (4) the number of times the Consultant has been previously sanctioned by the Ohio Department of Transportation; and
- (e) Whether the Consultant falsified, misrepresented, or withheld information.

DBE DEVELOPMENT GOAL CLAUSE

CLAUSE V - DBE BUSINESS ENTERPRISE REQUIREMENTS

It is the policy of the Ohio Department of Transportation that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts which the Consultant enters into pursuant to this contract. The Consultant must use good faith efforts to include DBE subconsultants. Consequently, the requirements of Title 49 CFR Part 26 apply to this contract. The Consultant must ensure that the DBE subconsultant(s) is performing a "commercially useful function" as defined in 49 CFR 26.55.

This agreement includes a DBE Contract Development Goal. The Consultant shall implement and complete the provisions of the attached DBE Contract Development Goal Implementation Plan, with an overall objective of assisting DBE firms, who have been certified as a DBE by the Ohio Department of Transportation, in improving long-term development, increasing opportunities to participate in a variety of kinds of work, handling increasingly significant projects, and achieving eventual self-sufficiency.

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

- (a) Provide quarterly reports of progress towards implementing and completing the provisions of the attached DBE Contract Development Goal Implementation Plan.
- (b) Provide an ongoing summary of DBE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.
- (c) Provide a quarterly report of the amounts actually paid to DBE subconsultants, and certification by the subconsultants of the amounts received.
- (d) Provide a written explanation if progress towards implementing and completing the Plan falls below the requirements of the Plan. If progress falls below the requirements of the Plan, a Corrective Action Plan shall be created describing exactly how a specific situation/issue will be changed to better meet the goals of the Plan. If the goal cannot be met, the Consultant will be required to establish good faith efforts (GFEs).

CLAUSE VI – PROCESS FOR ESTABLISHING GOOD FAITH EFFORTS

The Consultant must document the progress and efforts being made in meeting the goal for DBE development. In the event the Consultant is unable to achieve the DBE Development Goal placed on this project, the Consultant must demonstrate it made GFEs to meet the goal. Such information needs to be submitted to the Administrator, Office of Small & Disadvantaged Business Enterprise, Division of Opportunity, Diversity & Inclusion, 1980 West Broad Street, MS: 4190, Columbus, Ohio 43223. There will be no extension of time for the project granted if the Consultant wishes to avail itself of this process.

The Consultant may provide the following information and documentation to demonstrate GFEs:

- (a) A copy of the DBE Contract Development Goal Implementation Plan

- (b) A written explanation concerning reasons the Consultant was unable to achieve the requirements of the Plan.
- (c) Signed copy of each subcontract or purchase order agreement between the firms.
- (d) Copies of any and all Corrective Action Plans and subsequent activities that demonstrate the Consultant's commitment to adhere to the Plan.

The Department will review the submitted documentation and issue a written decision within 10 business days. The Consultant may request administrative reconsideration within 14 days of being informed that it did not demonstrate a GFE. The Consultant must make this request in writing to the following official:

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- (a) letter of reprimand;
- (b) contract termination; and/or
- (c) other remedies available by law including administrative suspension (consultant debarred from pursuing additional contracts).

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

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;

- (c) any steps taken to rectify the situation;
- (d) the Consultant's record of performance on other projects including, but not limited to:
 - (1) annual DBE participation over DBE goals;
 - (2) annual DBE participation on projects without goals;
 - (3) number of complaints the Ohio Department of Transportation has received from DBE firms regarding the Consultant; and
 - (4) the number of times the Consultant has been previously sanctioned by the Ohio Department of Transportation; and
- (e) Whether the Consultant falsified, misrepresented, or withheld information.

EDGE PARTICIPATION GOAL CLAUSE

CLAUSE V - EDGE BUSINESS ENTERPRISE REQUIREMENTS

It is the policy of the Ohio Department of Transportation that EDGE (Encouraging Diversity, Growth, and Equity) Business Enterprises shall have equal opportunity to compete for and perform subcontracts which the Consultant enters into pursuant to this contract. The Consultant must use good faith efforts (GFEs) to include EDGE subconsultants. Consequently, the requirements of Ohio Revised Code section 123.152 apply to this contract.

At least *** percent (**%) of this contract shall be subcontracted to EDGE firms who have been certified by the Director of the Ohio Department of Administrative Services.

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

- (a) Prior to starting work, provide a written plan for EDGE participation including a breakdown by PDP step if applicable (or similar breakdown by task), description of work to be performed by each EDGE subconsultant, and projected percentage of EDGE participation during each step of the work.
- (b) Provide an ongoing summary of EDGE subconsultant amounts invoiced, for the current invoice and as a running total for the contract.
- (c) Provide a quarterly report of the amounts actually paid to EDGE subconsultants, and certification by the subconsultants of the amounts received.
- (d) Provide a written explanation if the level of EDGE participation falls below the level stated in the EDGE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Consultant will be required to establish good faith efforts (GFEs).

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The Consultant may provide the following information and documentation to demonstrate GFEs:

- (a) Dollar value and % of EDGE goal. Dollar value and % of the EDGE goal shortfall.
- (b) Signed copy of each subcontract or purchase order agreement between the prime and EDGE subconsultant utilized in meeting the contract goal.

- (c) Copy of dated written communication, fax confirmation, personal contact, follow up and negotiation with EDGE firms.
- (d) Copy of dated written communication and/ or dated fax confirmation of EDGE firms that were not interested in providing services.
- (e) Documentation of all efforts to assign additional work to EDGE firms currently under subcontract, and if those efforts fail, efforts to secure additional EDGE subconsultants, including copies of dated written communication and/ or fax confirmation of personal contact, follow up and negotiation with the EDGE firms.
- (f) Documentation of additional GFEs to meet the EDGE subcontract goal, by looking beyond the items typically subcontracted or consideration of subcontracting items normally performed by the prime as a way to meet the EDGE goal.

The Department will review the submitted documentation and issue a written decision within 10 business days. The Consultant may request administrative reconsideration within 14 days of being informed that it did not demonstrate a GFE. The Consultant must make this request in writing to the following official:

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

- (a) the magnitude and the type of offense;
- (b) the degree of the Consultant's culpability;
- (c) any steps taken to rectify the situation;
- (d) the Consultant's record of performance on other projects including, but not limited to:
 - (1) annual EDGE participation over EDGE goals;
 - (2) annual EDGE participation on projects without goals;
 - (3) number of complaints the Ohio Department of Transportation has received from EDGE firms regarding the Consultant; and
 - (4) the number of times the Consultant has been previously sanctioned by the Ohio Department of Transportation; and
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This agreement includes an EDGE Contract Development Goal. The Consultant shall implement and complete the provisions of the attached EDGE Contract Development Goal Implementation Plan, with an overall objective of assisting EDGE firm(s), who have been certified by the Director of the Ohio Department of Administrative Services, in improving long-term development, increasing opportunities to participate in a variety of kinds of work, handling increasingly significant projects, and achieving eventual self-sufficiency.

In order to be assured that the Consultant complies with this contractual requirement during the course of the work, the Consultant shall:

- (a) Provide quarterly reports of progress towards implementing and completing the provisions of the attached EDGE Contract Development Goal Implementation Plan.
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The Consultant may provide the following information and documentation to demonstrate GFEs:

- (c) A copy of the EDGE Contract Development Goal Implementation Plan

- (d) A written explanation concerning reasons the Consultant was unable to achieve the requirements of the Plan.
- (c) Signed copy of each subcontract or purchase order agreement between the firms.
- (d) Copies of any and all Corrective Action Plans and subsequent activities that demonstrate the Consultant's commitment to adhere to the Plan.

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 - (1) annual EDGE participation over EDGE goals;
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