

JANUARY 29-30, 2025

ANNUAL

**DBE WORKSHOP
& Networking Summit**



Open-Ended Performance Plans for DBE on Design-Build Projects

ANNUAL **DBE WORKSHOP**
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2025

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Overview

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- ▶ How an OEPP Works
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- ▶ Monitoring an OEPP
- ▶ Evaluating Good Faith Efforts
- ▶ Benefits of Using OEPP With Design-Build
- ▶ WisDOT OEPP Requirements

WisDOT Design-Build Background

Design-Build - “an agreement that provides for design and construction of improvements by a contractor or private developer.” from 23 CFR Part 636

- ▶ 2019 legislation - Statute 84.062 Alternative Project Delivery
 - “The department shall administer a program for design-build projects”
 - Two-phase process
 - ▶ Request for Qualifications
 - ▶ Request for Proposals
- ▶ 2021 legislation
 - Pilot program
 - \$250 million dollar cap on program
 - 6 projects - 3 different types of design-build

WisDOT Design-Build Process

- ▶ WisDOT (or design consultant)
 - Develops preliminary plans
 - Completes an accepted environmental document
 - Design approximately 30% complete
 - Preferable to have Real Estate obtained by RFP release
 - Preferable to have utility coordination underway by RFP release
- ▶ 2-Step procurement process for design-builder
 - Request for Qualifications (RFQ)
 - Request for Proposals (RFP)

Design-Build, a 2-Phase Process

- ▶ Phase 1: Evaluation of Qualifications
 - ▶ RFQ (Request for Qualifications)
 - ▶ Interested teams submit SOQs (Statements of Qualifications)
 - ▶ WisDOT evaluates SOQs
 - ▶ best-qualified teams shortlisted
 - ▶ Ensures a qualified pool of proposers will be included in Phase 2
- ▶ Phase 2: Evaluation of Proposals
 - ▶ Shortlisted firms receive RFPs (Request for Proposals)
 - ▶ Teams submit Proposals
 - ▶ WisDOT evaluates proposals
 - ▶ Successful proposal is determined per state statute.



MnDOT Design Build Program

- ▶ Alternative Delivery (Design-Build and CMGC)
- ▶ 23-Year History
- ▶ 1996: First Design-Build project
- ▶ 2002: First “modern” Design-Build project
- ▶ 2007: Design-Bid-Build Best Value Authority
- ▶ 2013: CMGC Authority and first project

- ▶ 52 Projects
- ▶ 31 Best Value Design-Build (\$1 - 238 Million)
- ▶ 10 Low Bid Design-Build (\$2 - 30 Million)
- ▶ 4 “Maximum scope” Design-Build (\$0.5 - 104 Million)
- ▶ 6 CMGC (\$30-165 Million)
- ▶ Typically 4-5 Alternative Delivery projects per year (of roughly 230 total)

MnDOT Design Build Program

- ▶ State and Federal Laws
- ▶ Limits under State Statute
- ▶ Design-Build: 10% of MnDOT's program by count
- ▶ CMGC: 10 total projects, until reauthorized

- ▶ Limits under Federal Statute
- ▶ 23 CFR 636: Regulation for Federal-Aid Design-Build projects
- ▶ Delegates direct oversight authority to MnDOT with our Design-Build Manual
- ▶ Any technique not allowed by the Design-Build Manual is not allowed by the FHWA
- ▶ Other techniques may be considered through SEP-14 process
- ▶ NEPA (typically) required to be complete prior to RFP release
- ▶ FHWA Authorization, when required (now rare), must occur prior to RFP release

Design-Build Program Contacts

▶ MnDOT

- ▶ Any questions on MNDOT's Design Build Program
- ▶ Peter Davich, PE, DBIA
Design-Build Program Manager
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▶ WisDOT

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Open-Ended Performance Plan (OEPP)

- ▶ Project DBE participation goal included in RFP
- ▶ OEPP submitted with design-build proposals
- ▶ OEPP is a plan of how to meet project goal
 - ▶ Work types planned for participation
 - ▶ Work amounts planned for participation
 - ▶ Timeframes for participation
 - ▶ Need a plan for meeting the DBE Goal, however specific firms not needed at time of RFP



How is an OEPP Different?

▶ Traditional design-bid-build projects → Bidders identify and verify their commitments to the DBE goal with named DBEs

Traditional
Projects

- Instead -

▶ Proposers submit a commitment to meet the goal with details of anticipated subcontracting opportunities.

Design-Build
Projects



Why OEPP?

- ▶ Design build contracts typically advertised prior to final design.
 - ▶ Many details yet to be determined - final design, materials, quantities, scheduling.
- ▶ DBEs reluctant to subcontract due to lack of project details.
- ▶ DBEs may commit to subcontracts with lack of details they possibly cannot fulfill.
- ▶ Longer projects - conditions may change
 - ▶ Project needs
 - ▶ Available DBE firms
- ▶ Proposers submit documentation of why they cannot achieve the goal instead of subcontracting with DBEs.



Federal Requirement - 49 CFR 26.53 (e)

- ▶ With new regulations, implemented May 2024, US DOT created a new requirement for DBE Commitments on Design Build Projects
- ▶ Open Ended Performance Plan (OEPP)
- ▶ Details found on 49 CFR 26.53 (e)



How Does an OEPP Work?

- ▶ All proposers must submit OEPP as a condition of a responsive proposal.
- ▶ The OEPP is the proposer's binding commitment to meet the DBE goal.
- ▶ OEPP is first step in the awarded design-builder's efforts to achieve the DBE goal.
- ▶ OEPP must be complete:
 - ▶ Anticipated type of subcontracting or services
 - ▶ Time frame
 - ▶ Dollar value.
- ▶ The Plan should be reasonable (e.g., not putting all DBE efforts in one scope).
- ▶ Sponsor will provide ongoing monitoring to assure every effort is made to fulfill the OEPP with actual DBE subcontracts when project details are known.
- ▶ The recipient and the design-builder may agree to make written revisions to the OEPP throughout the life of the project as long as the design-builder continues to use good faith efforts to meet the goal.



What Must an OEPP Include?

- ▶ A complete OEPP includes:
 - ▶ Anticipated work type for DBE participation
 - ▶ Anticipated timeframe of that work
 - ▶ Anticipated dollar value of the work opportunities
 - ▶ When submitted, OEPP must add up to at least the dollar value of the goal percentage.
 - ★ Submitted OEPP MUST show how the proposer will meet or exceed the project goal ★
 - ▶ Participation of both professional services and construction DBE firms is required - encourage flexibility in how the design-builder meets the overall contract goal.



WisDOT OEPP Attachment 1 (Draft)



| Submittal Date | Original Submittal or Revision? | Revision Number | | | | | | |
|---|---|--|--|--|------------------------------------|--|------------------------------|----------------------------------|
| Click or tap to enter a date. | Choose an item. | | | | | | | |
| Planned DBE Work Type OR Committed DBE Firm Name (1) | Work Items to be <u>Subcontracted</u> (NAICS Code) (2) | Anticipated Timeframe for Performance of DBE Work (3) | Professional Services or Construction Work? (100% Credit) (4) | Supplier or Manufacturer? Y/N and Credit % (40%; 60% or 100% Credit*) (5) | Trucking Only? (100% Credit**) (6) | DBE Full Sub-Contract or Estimate \$ (7) | DBE Amount for Credit \$ (8) | Design or Construction Work? (9) |
| Aggregate trucking | 484110, General Freight Trucking, Local | Q2/3 2027 | N/A | N/A | Y | \$46,000 | \$46,000 | Construction |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| Total | - | | - | - | - | - | \$ | |

*depending on designation
 ** for DBE trucking working on project

Project Goal from Section 1.0: _____% Cost Proposal: \$_____

Planned DBE Participation Achievement for this plan [Column (8) Total] ÷ [Price Proposal] * 100% = _____%

OEPP Updates

- ▶ Flexibility is essential to OEPP
- ▶ Design-builders and sponsors work together to address modifications to the OEPP to align with the changing conditions of the project
- ★ **OEPP Is updated by design-builder throughout design and construction** ★
 - ▶ Design-builder works with MnDOT or WisDOT
 - ▶ MnDOT or WisDOT approves updates
- ▶ Design-builder has time to plan and monitor DBE achievement



Updates to OEPP

- ▶ Update OEPP when:
 - ▶ Project details are finalized
 - ▶ Work types change
 - ▶ Work amounts change
 - ▶ Commitments are added
 - ▶ NTP 1
 - ▶ NTP 2
 - ▶ Commitments are changed/modified/reduced
 - ▶ Committed firms are changed
- ▶ Only one submittal of DT 1506 “Commitment to Subcontract to DBE” (WisDOT)
MnDOT currently working on Bidder Quoter Plans
- ▶ Submit additional Attachment A (WisDOT)/Exhibit A (MnDOT) for each DBE commitment obtained

★ If the OEPP includes a named DBE, 49 CFR §26.53 requirements still apply, including termination due process requirements. ★

Evaluating an OEPP

- ▶ Expectations for the OEPP must be communicated in the contract's Request for Proposals (RFP).
- ▶ Anticipated work listed in OEPP must align with type of work needed for the project.
- ▶ The OEPP must show enough work opportunities for DBEs to achieve the goal.
- ▶ Proposers submit a narrative detailing how the OEPP plan was formulated and how it will be successfully implemented.

Monitoring an OEPP

- ▶ WisDOT/MnDOT monitors the design-builder's efforts to comply with the OEPP
- ▶ WisDOT/MnDOT and design-builder can agree on revisions to the OEPP over the course of the project.
- ▶ WisDOT/MnDOT must approve all changes to the OEPP.
- ▶ As contracts are executed with named DBEs and payments are made achievement toward the DBE goal is credited.
- ▶ Design-builder must meet regularly with WisDOT/MnDOT to review progress toward meeting project goal
- ▶ Participation updates must be submitted to WisDOT/MnDOT at least monthly

WisDOT Monthly DBE Participation Update for OEPP Instructions - DRAFT

| Submittal Date | Date of Current Update | Project Number: <i>Enter Project Number</i> | | Add additional sheets as needed for additional months of the project. Month 1 should be the first month that payments are made to committed DBE firms. The final month should be the month following the last month where payments are made to committed DBE firms. | | | | | | | | | |
|---|--|--|--|---|---|---|---|---|--|---|---|--|--|
| | | Total Cost Proposal: <i>Enter Total Value of Cost Proposal</i> | | | | | | | | | | | |
| | | DBE Goal (%): <i>Enter DBE Goal from RFP</i> | | | | | | | | | | | |
| | | DBE Goal Value (\$): | | | | | | | | | | | |
| | | Planned DBE Participation (\$): | | Actual DBE Participation Achieved to Date (\$): | | | | | | | | | |
| | | Planned DBE Participation (%): | | Actual DBE Participation Achieved to Date (%): | | | | | | | | | |
| DBE Firm Name or Planned DBE Work Type | Work Items to be Subcontracted (NAICS Code) | Professional Services or Construction DBE? | Tier # | DBE Work Complete? (Y/N) | Actual or Anticipated DBE Work Start Date | Actual or Anticipated DBE Work End Date | DBE Work Amount Proposed in Initial OEPP (\$) | DBE Work Amount Proposed in most recent update to OEPP (Attachment A) (\$) | DBE Work Amount Paid through Prior Month (\$) | Reporting Month DBE Participation Amount (\$) | Total Actual DBE Payment Amount to Date (10)+(11) | Difference Between Commitment vs Total Actual Payments to date (12)-(11) | Narrative (9). Discuss reasons for differences in Columns (8) and (9). Discuss any updates related to the listed DBE Firm or Planned DBE Work Area. Attach additional narrative, if required. |
| (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8) | (9) | (10) | (11) | (12) | (13) | (14) |
| <i>If the specific DBE firm is not yet known, include the planned DBE work area in this column as it appears on the most recent update to OEPP. Once known, DBE firm names should be included in this column.</i> | <i>Include specific NAICS codes for work planned to be subcontracted to DBE firms.</i> | <i>Indicate whether this applies to design (professional services) or construction</i> | <i>Indicate subcontractor tier for the given work item</i> | <i>Choose Yes or No, whether the given work item has been completed</i> | <i>If the DBE work has begun/finished, this should be the actual date. If the work is still planned, include the anticipated start date</i> | <i>If the DBE work has begun/finished, this should be the actual date. If the work is still planned, include the anticipated end date</i> | <i>Include the amount for each given work item that was included in the initial OEPP submitted with the cost proposal</i> | <i>Include the amount for each given work item as updated in the most recent OEPP submittal. If no updates apply to a given work item, the amount included in the initial OEPP submitted should also be included in this column</i> | <i>This should be the amount in Column (12) from the previous month's update. If this is the first monthly update, this value would be \$0</i> | <i>Include the amount of DBE participation paid in the past month (as of the time of reporting). If work has not occurred on a given DBE work item in the previous month, this value would be \$0</i> | <i>This column is a calculated value</i> | <i>This column is a calculated value</i> | <i>Include discussion of any differences between the initial proposed amount and the updated proposed amount for a given work item, if that change has not been previously addressed. Include similar discussions for changes in anticipated DBE work start and end dates.</i> |

Evaluating Good Faith Efforts (GFE) Post Award

- ▶ OEPP at time of award shows anticipated work that sums to the dollar value of the DBE goal
- ★ **NO GFE WILL BE ACCEPTED AT TIME OF PROPOSAL.**★
- ▶ Plan can be modified throughout the project with WisDOT/MnDOT approval
 - ▶ different work opportunities,
 - ▶ value of work opportunities
 - ▶ timeframes
 - ▶ must still add up to meet or exceed the goal value.
- ★ **If the goal cannot be achieved and no subcontracting opportunities remain in the contract, the design-builder can submit documentation of unsuccessful efforts for WisDOT's/MnDOT's review and approval.**★
- ▶ Efforts should be coordinated with WisDOT/MnDOT throughout until no subcontracting opportunities remain
- ▶ Submittal should document GFE activities that were performed in coordination with WisDOT/MnDOT

Benefits of Using OEPP with Design-Build

- ▶ DBEs sign subcontracts when the project details are known.
- ▶ Opportunities for DBEs arise throughout the project, diversifying services DBEs provide.
- ▶ Due to details known at time of execution, high probability DBE will successfully complete their subcontract, be paid for their work.
- ▶ Design-builders are more likely to achieve the DBE goal with DBE subcontracts (as compared to documented efforts of how they could not).
- ▶ Design-builders like the OEPP because they select DBEs when they know more about the project



WisDOT OEPP Requirements (Draft)

- ▶ **Section 1.0 - Plan Goals**
- ▶ **Section 2.0 - DBE Work Plan**
 - ▶ Types of work
 - ▶ Reasoning
 - ▶ Firm availability
 - ▶ Efforts to notify, solicit, recruit
 - ▶ Communication/Integration of DBE firms
- ▶ **Section 3.0 - Strategies for Achievement**
 - ▶ Any specific tools/resources for implementing the plan
- ▶ **4.0 - DBE OEPP Administration**
 - ▶ How plan will be administered
 - ▶ Compliance contact for WisDOT
- ▶ **5.0 - Tracking and Reporting**
 - ▶ Document compliance with the OEPP
 - ▶ Track participation towards achieving project goal
- ▶ **6.0 - Capacity Building**
 - ▶ Any plans for capacity-building

Upcoming WisDOT Design-Build Projects

- ▶ Blatnik Bridge (MnDOT led): RFQ release planned summer/fall of 2025
 - ▶ [Blatnik Bridge Project - Design-Build - MnDOT](#)
- ▶ I-494 Airport to Hwy 169 Project 2 (MnDOT): Planned Letting Fall 2026
 - ▶ [I-494 Airport to Hwy 169 Project 2 - Design-Build - MnDOT](#)
- ▶ I-90/94 Interchange East of Tomah (WisDOT): SOQs due 2/19/25
 - ▶ [Wisconsin Department of Transportation I-90 and I-94 Interchange east of Tomah, Monroe County \(Cranberry Interchange\)](#)
- ▶ US 51/WIS 29 Preservation (WisDOT) : Planned RFQ release 3/13/25
 - ▶ [Wisconsin Department of Transportation US 51/ WIS 29 Preservation Project, Marathon County](#)
- ▶ I-94 Crawfish and Rock River Bridge Replacements (WisDOT): Planned RFQ release Spring 2026
 - ▶ [Wisconsin Department of Transportation I-94 Crawfish and Rock River Bridge Replacements, Jefferson County](#)