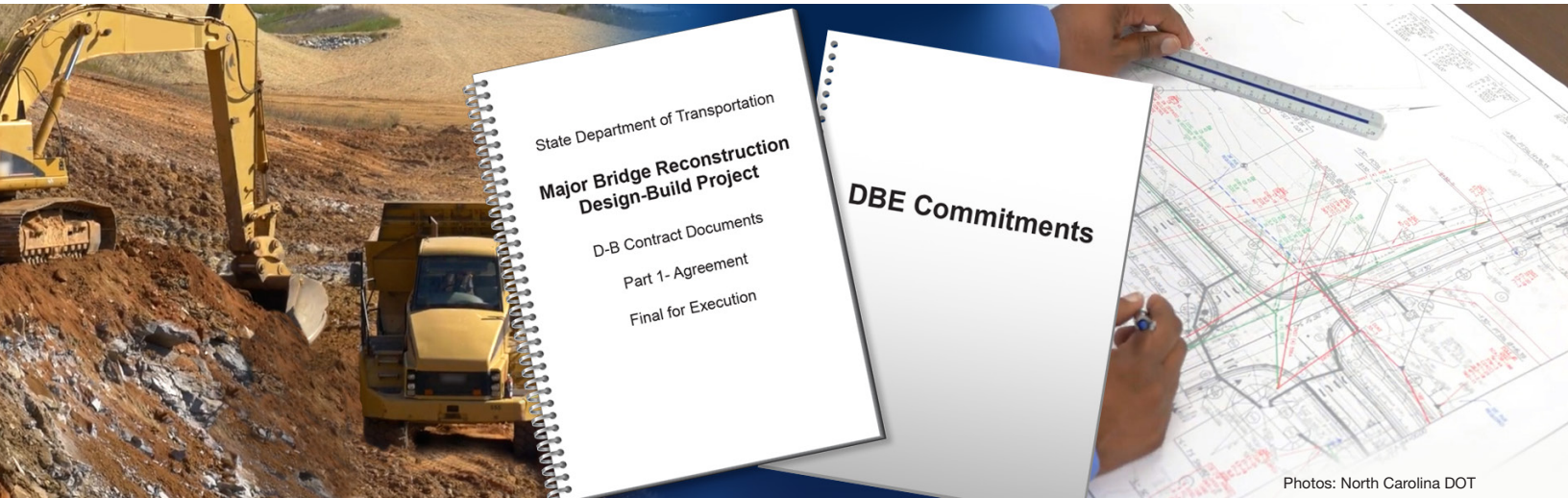


# Rethinking DBE for Design-Build

New tools and innovative practices increase Disadvantaged Business Enterprise (DBE) Program participation in design-build contracting.



Photos: North Carolina DOT

Providing opportunities for small, disadvantaged firms is the essence of the DBE Program. However, as States, or other project sponsors, increase their use of design-build for project delivery, this contracting method is presenting challenges to ensuring that equitable opportunities are realized. Innovative tools and practices are available for modifying traditional DBE commitment processes to align with the design-build process and improve participation.

## AN OPEN-ENDED APPROACH

Design-build is a popular alternative contracting method where the project sponsor contracts with the most qualified team to both design and build the project. Design-build contracting is used frequently on larger, complex highway and bridge projects that have potentially significant subcontracting opportunities for DBEs. However, since the projects are not fully designed at time of proposal and the details of available subcontracting opportunities are not yet known, it may be challenging for prime contractors to name DBEs in their commitment plan. In some instances, prime contractors may submit documented good faith efforts instead of a DBE subcontract, thereby limiting opportunities for small, disadvantaged firms.

One solution States have begun using is an open-ended performance plan. An open-ended performance plan is a modified DBE commitment plan that, instead of naming DBEs to perform specific work at a specific price, allows the proposer to list anticipated work types for planned DBE participation throughout the life of the project. This type of plan, specifically for design-build contracting,

serves as a roadmap detailing how the DBE goal can be achieved.

In addition to using open-ended performance plans, other FHWA resources are available to support successful integration of DBEs in design-build contracting. These include templates, a toolkit with sample language for proposals and contracts, tools for monitoring and oversight, and training materials.

## BENEFITS

States, DBEs, and design-build teams can benefit in several ways from using open-ended performance plans and other available tools for successful implementation of the program and equitable DBE opportunities in design-build contracting.

**Enhanced Opportunities.** DBE participation can be increased on design-build projects by providing a wider variety of work types throughout the life of the project.

**Flexibility.** Design-build teams will have more options to plan and execute DBE participation throughout the project.

**Reduced Risk.** Open-ended performance plans can provide better levels of certainty and mitigate risk for States, design-build teams, and DBEs.

**Efficiency.** Increased participation reduces the need for resource-intensive good faith effort reviews and other associated administrative actions.

## STATE OF PRACTICE

Nearly every State has enacted design-build contracting legislation. While most continue to use traditional methods for DBE goal setting and request commitments to named DBEs up front, several States have successfully adopted open-ended performance plans to enhance DBE participation.

- ▶ The Texas DOT has been using open-ended performance plans for many years and has integrated them in its design-build procedures manual.
- ▶ The Colorado DOT is successfully using an open-ended performance plan on its Central 70 public-private partnership project as well as several other current design-build projects. In its Request for Qualifications, Instructions to Proposers, and Request for Proposals, the agency includes open-ended performance plans in its design-build template language.
- ▶ After being approached by prime contractors to use open-ended performance plans, the MassDOT Highway Division is looking into adopting new design-build procedures.

## RESOURCES

[DBE Program Administration and Oversight on Projects with Alternative Contracting and Procurement Methods Handbook](#)

FHWA [DBE Website](#)

U.S. DOT DBE [Program Homepage](#)

[Design Build Institute of America](#)

Design-Build Institute of America [2021 State Statute Report](#)

49 CFR 26 – [Participation by Disadvantaged Business Enterprises in DOT Financial Assistance Programs](#)

23 CFR 636 – [Design Build Contracting](#)



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