

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
**CONSTRUCTION DIRECTIVE
MEMORANDUM**

GENERAL SUBJECT:	<u>FINAL ACCEPTANCE LETTER</u>	NUMBER:	<u>CD-2007-5</u>
		DATE:	<u>July 26, 2007</u>
SPECIFIC SUBJECT:	<u>DBE GOALS AND SWAM POTENTIAL ACHIEVEMENTS</u>	SUPERSEDES:	<u>CD-2000-8</u>
		SUNSET/ EXPIRES:	<u>July 26, 2012</u>

**Original w/Signature on file in Office of Scheduling
and Contract Division**

**W. BYRON COBURN, JR., P.E.
STATE CONSTRUCTION ENGINEER**

DIRECTED TO - DISTRICT ADMINISTRATORS

The following procedures will be followed in determining project compliance; specifically with meeting the Disadvantaged Business Enterprise (DBE) goals or Small Women and Minority (SWAM) potential achievements.

On Federal projects nearing completion, the Contractor shall submit a Form C-63 marked Semifinal within 20 days of the submission of the last regular estimate. This will be accompanied by a letter of certification, signed by the prime Contractor and appropriate DBE, indicating the amount, including retainage, that remains to be paid. Form C-63A will no longer be required. Payments to DBEs will be verified using prompt payment procedures.

At the final acceptance of the project, a determination must be made by the person in responsible charge of the project and the District Civil Rights Manager (DCRM) regarding the Contractor's compliance or non-compliance with the project's DBE goals on Federal projects, and SWAMs' potential achievements on State projects:

1. If the Contractor is in compliance, the responsible charge will notify the Contractor by letter that it is in compliance with the goals or potential achievements, as applicable, on the project. Copies of that letter will be sent to the State Construction Engineer (Scheduling & Contract Engineer) and to the Civil Rights Division.
2. If the Contractor is not in compliance, the responsible charge will notify the Contractor by letter that it is in non-compliance with the goals or potential achievements, as applicable, on the project. Copies of that letter will be sent to the State Construction Engineer and to the Civil Rights Division. ***Please note: When there is non-compliance on a Federal Project, this letter is critical in that it establishes a specific point from which to measure the various time frames if the Contractor wants to request a panel hearing.***

On Federal projects, within 30 days of the payment of the Final estimate, the Contractor shall submit a Form C-63 marked Final. The final Form C-63 will be compared with the Semifinal submissions to assure proper payment has been made to the DBE subcontractors and make certain that the Contractor has fully complied with the requirements of Special Provision for Section 110.04 of the specifications.

Attached are example letters for anticipated conditions, i.e., DBE goals met; DBE goals not met; no DBE goals; SWAM potential achievements met; SWAM potential achievements not met; no SWAM potential achievements. It is imperative that the language in bold type be included in the actual letter sent in accordance with the applicable condition(s).

C: Commissioner
Deputy Commissioner
Commissioner's Staff
Division Administrators
District Construction Engineers
District Maintenance Engineers
District Materials Engineers
District Preliminary Engineering Managers
District Location and Design Engineers
District Civil Rights Managers
District Contract Administrators
Regional Operations Directors
Residency Administrators
Area Construction Engineers
Construction Managers
Project Inspectors
Federal Highway Administration
Office of the Attorney General
Virginia Department of Minority Business Enterprise
Virginia Transportation Construction Alliance
Old Dominion Highway Contractors Association
Virginia Asphalt Association
American Concrete Pavement Association
Virginia Ready-Mixed Concrete Association
Virginia Tech. Dept. of Civil Engineers
Precast Concrete Association of Virginia
Division Library

EXAMPLE LETTER FOR DBE GOALS NOT MET FEDERAL PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer and the project is accepted as of (DATE).

This project has a > _____ percent DBE goal. At this writing, our records indicate the DBE goals have not been met. Paragraph 1 of the section on During the Contract, in Special Provision 110.04 states, "If the Contractor fails upon completion of the project to meet the required participation, the Contractor and any prime contractor affiliates, as in the case of a joint venture, may be enjoined from bidding as a prime Contractor, or participating as a subcontractor on VDOT projects for a period of 90 days."

Paragraph 2 of the section on During the Contract, in Special Provision 110.04 states, "Prior to enjoinder from bidding or denial to participate as a subcontractor for failure to comply with participation requirements, as provided hereinbefore, the Contractor may submit documentation to the Construction Engineer to substantiate that failure was due solely to quantitative underrun(s) or elimination of items subcontracted to DBEs and that all feasible means have been used to obtain the required participation. The Construction Engineer, upon verification of such documentation, shall make a determination whether or not the Contractor has met the requirements of the Contract."

Paragraph 3 of the aforementioned provision states, "If it is determined that the aforementioned documentation is insufficient or the failure to meet required participation is due to other reasons, the Contractor may request an appearance before the Administrative Reconsideration Panel to establish that all feasible means were used to meet such participation requirements."

If you elect to request an administrative review, as mentioned in Paragraph 2 of the section on During the Contract, of Special Provision 110.04, or a panel hearing, as mentioned in Paragraph 3 of the aforementioned provision, you are to advise the State Construction Engineer, 1401 East Broad Street, Richmond, Virginia, 23219, in writing, within 14 days of the date of this correspondence. Failure to make this written request within the time specified will result in an automatic ninety (90) day enjoinder. Any relevant documentation that you want to be considered by the Panel should be included in your panel hearing request. A panel hearing brochure is attached for your information.

Within forty-five (45) days of the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division

EXAMPLE LETTER FOR DBE GOALS MET FEDERAL PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer, and the project is accepted as of (DATE).

The project had a >_____ percent DBE goal. At this writing, our records indicate the DBE requirements will be met.

Within forty-five (45) days the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division

EXAMPLE LETTER FOR NO DBE GOALS FEDERAL PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer, and the project is accepted as of (DATE).

There were no DBE goals on this project.

Within forty-five (45) days of the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division

EXAMPLE LETTER FOR SWAM POTENTIAL ACHIEVEMENTS MET STATE PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: >Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer, and the project is accepted as of (DATE).

At this writing, our records indicate the SWAM potential achievements committed on this state-funded project will be met.

Within forty-five (45) days of the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division

EXAMPLE LETTER FOR NO SWAM POTENTIAL ACHIEVEMENTS STATE PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: >Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer, and the project is accepted as of (DATE).

There were no SWAM potential achievements on this project.

Within forty-five (45) days of the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division

EXAMPLE LETTER FOR SWAM POTENTIAL ACHIEVEMENTS NOT MET STATE PROJECTS

>Date

>Contractor Name

>P.O. Box

>City, State Zip

ATTN: >

SUBJECT: Project Number
Final Inspection

To Addressee:

In accordance with your letter dated (DATE), a final inspection has been made on the above mentioned project on (DATE) with the following in attendance:

As authorized by the Chief Engineer, the work on the referenced project is deemed completed to the satisfaction of the Chief Engineer, and the project is accepted as of (DATE).

At this writing, our records indicate the SWAM potential achievements committed on this state-funded project will not be met. If appropriate, please provide documentation from the SWAM Contractors advising they could not or would not perform the work as noted on Form C-61. If the potential achievements were not met due to quantitative underrun(s) or elimination of items subcontracted, please state it with the correspondence from the SWAM.

If you are unable to obtain this information from the SWAM, please provide documentation concerning why the committed potential achievements were not met. Also, provide documentation of your good faith efforts to obtain a substitute SWAM to perform an equal or greater dollar value of work.

Within forty-five (45) days of the final acceptance of the project, all required forms, certifications, and releases are due. Failure to submit these forms may extend the ninety (90) day time limit for final payment in accordance with Section 109.09 of the Specifications.

Sincerely,

Title (Responsible Charge of Project)

>SEC/RE

cc: Malcolm T. Kerley, P.E.
DBE Section – Civil Rights Division