Title: HIGHWAY DESIGN MANUAL (HDM) CHAPTER 21 - CONSTRUCTION CONTRACT GOAL SETTING GUIDANCE

ADMINISTRATIVE INFORMATION:

- This Engineering Instruction (EI) is effective immediately.
- This EI is applicable to federal aid NYSDOT and local let construction contracts.
- This EI is being issued concurrently with E1 19-053 Disadvantaged Business Enterprise (DBE) Goal Setting Tools for Construction Contracts.
- No Shelf Notes/Special Notes are superseded by this EI.
- The changes to Highway Design Manual (HDM) Chapter 21 issued with this EI will be incorporated into a future HDM revision.

PURPOSE: To update the Highway Design Manual Chapter 21 construction contract goals setting guidance and announce the availability of detailed guidance on the Office of Civil Rights website.

TECHNICAL INFORMATION:

- Highway Design Manual Chapter 21, §21.3.8 – Advanced Detailed Plans (ADP)
  Updated to require the applicable construction contract DBE, M/WBE and SDVOB goal setting process(es) to begin at or before ADP review to enable multidisciplinary collaboration in establishing the project specific goals included in the PS&E submission.
- Highway Design Manual Chapter 21, §21.9.2.5 - PS&E Transmittal Memo
  Updated paragraph B.14. to accommodate difference in DBE (federal aid) and M/WBE and SDVOB (100% State funded) goal setting procedures.
- EB 19-053 Disadvantaged Business Enterprise (DBE) Goal Setting Tools for Construction Contracts
  announced availability of the table of Construction Contract Groups, Multi-Regional (Market Area) Map, and the Baseline DBE Goal Selection Chart for setting Disadvantaged Business Enterprise (DBE) goals for federal aid construction contracts.
- Future updates to the Goal Setting Tools will be announced by EB as they become available.

IMPLEMENTATION:

Project specific goals shall be determined using the updated construction contract goal setting guidance for:

- NYSDOT let construction contracts with Advance Detailed Plans review initiated on or after January 1, 2020.
- Local let construction contracts with Detail Design Authorization requested on or after January 1, 2020.
TRANSMITTED MATERIALS:

- Updates to Sections 21.3.8, & 21.9.2.5 are available on the Highway Design Manual Chapter 21 website (https://www.dot.ny.gov/divisions/engineering/design/dqab/hdm/chapter-21).
- The following documents are available on the Office of Civil Rights’ DBE website (https://www.dot.ny.gov/main/business-center/civil-rights/dbe):
  - DBE Goal Setting Procedures for NYSDOT Administered Construction Contracts;
  - DBE Goal Setting Procedures for Locally Administered Construction Contracts; and,
  - Construction Contracts DBE Goal Assessment Form
- The following documents are available on the Office of Civil Rights’ MWBE website (https://www.dot.ny.gov/main/business-center/civil-rights/mwbe-program):
  - MWBE Goal Plan
  - Pre-Letting Waiver Request Template
  - Pre-Advertisement Modification Request Template (Local)
- The following document is available on the Office of Civil Rights’ SDVOB website (https://www.dot.ny.gov/main/business-center/civil-rights/sdvob-program):
  - SDVOB Waiver Form

BACKGROUND: Changes to Chapter 21 are necessary to implement improvements to the Department’s Disadvantaged Business Enterprises (DBE), Minority and Women Owned Business Enterprises (MWBE) and Service-Disabled Veterans Owned Business (SDVOB) construction contract goal setting procedures.

CONTACT: Direct questions regarding this issuance to Sondra Little, Director of the Office of Civil Rights at (518) 485-2009 or sondra.little@dot.ny.gov. Questions regarding implementation on NYSDOT-let contracts should be directed to Robert Howland at (518) 457-3227 or robert.howland@dot.ny.gov. Questions regarding implementation on Local-let contracts should be directed to Dawn Arnold at (518) 474-5615 or dawn.arnold@dot.ny.gov.
21.3.8 Advance Detail Plans (ADPs) and the Developing Contract

The Advance Detail Plan (ADP) phase (i.e., Design Phase V of the Design Stage) provides for a review of the nearly complete detailed final plans by Regional Office functional units, Regional quality control and, as appropriate, the FHWA, the Thruway Authority, Main Office functional advisory units, and Local Agencies and organizations with jurisdiction over the project facility. This occurs before Design Phase VI (i.e., the PS&E phase).

The ADP phase also provides for a review of other key components of the developing contract. The ADPs and supporting materials should be submitted for review as discussed in Chapter 4 of the Project Development Manual and Regional Policy.

There are several goals for the reviews in the ADP phase:

- Confirm that scope is consistent with prior approvals and verify that commitments made in Design Phase I-IV have been incorporated into the plans and proposal. This includes design criteria and standards, approved non-standard features, agreements and/or permits with municipalities, outside agencies or property owners, and any other commitments made by the Department in the course of developing the project;
- Confirm that no non-standard features, without prior justification and approval, have been introduced into the project since the Design Approval Document was signed;
- Confirm that the contract documents are consistent with department guidance;
- Determine whether the project, as designed, is biddable, and buildable, at a reasonable cost and within a reasonable timeframe;
- Anticipate potential problems that if not addressed could affect the project schedule and;
- Evaluate the current cost estimate; and,
- Formally initiate the applicable DBE (Federal-Aid), or M/WBE and Service Disabled Veteran Owned Business (SDVOB) (non-Federal-Aid/100% State) construction contract goal assessment process(es)

During the ADP phase, the estimate is refined as project details are defined. Work items are determined and estimates of unit prices can be made. Special Specifications and Proposal Special Notes are evolving during the ADP phase.

For ADP review, the project materials should be developed to the extent noted below:

**Plans**

- Should be organized in the same manner as the final plans;
- Plan sets shall utilize grayscale base mapping and all utility information shall be displayed using the standard color assigned to each utility. See Section 21.3.7.2;
- Should contain all the applicable sections of the plans (and content) discussed in Section 21.3.9.1;
- Should contain about 90% of the information necessary for the final plans;
- Need not include a completed Title Sheet; and,
- Need not include completed Miscellaneous Tables.
Proposal Materials

- All special notes that will be included in the proposal should be in draft form.
- Special specifications for the project that have not previously been used for other PINs should, as a minimum, have a title and description.

Estimate

- A current estimated construction cost (include 5-10% contingency)

All items that will be contained in the contract, including their titles and unit price estimates*, should be identified. Considerations in determining the unit price is to be documented for the top 10% of all contract items by estimated cost as discussed in section 21.6.3.2.A.3. This is with recognition that item changes may occur based on ADP comments. (*Price estimates for lump sum items need not be finalized).
- Quantities should be estimated but need not be finalized.

Environmental

- A draft of the Environmental Commitments Checklist (ECC) for the project, completed as much as possible.
- Draft GreenLITES evaluation.

Construction Contract Goals¹:

- Disadvantaged Business Enterprise (DBE) Goals (Federally Funded Contracts) – Using the current table of Construction Contract Groups, Multi-Regional (Market Area) Map, and the Baseline DBE Goal Selection Chart, complete the assessment portion of the Construction Contract DBE Goal Assessment Form; or,

- Minority and Women Owned Business Enterprise (MWBE) Goals (non-Federal Funded/100% State) – Evaluate opportunities for MWBE participation in comparison to NYSDOT’s current MWBE Goal Plan in consultation with your Construction and Civil Rights counterparts; and,

- Service-Disabled Veteran Owned Business (SDVOB) Goals (non-Federal Funded/100% State) – Evaluate opportunities for SDVOB participation in comparison to the statutory six percent (6%) authorized by Article 17-B of New York State Executive Law in consultation with your Construction and Civil Rights counterparts;

Where goals other than the NYSDOT MWBE Goal Plan or statutory values are proposed, initiate the approval process by completing the Pre-Letting Waiver Request Template and/or SDVOB Waiver Form.

When ADPs and project materials are distributed for review, they should be accompanied with a written discussion on the applicability and status of the following items:

¹ Detailed goal setting guidance and forms are available on the Office of Civil Rights website.
• Betterments;
• Encroachments;
• Street closings;
• Detours;
• Transfer of jurisdiction;
• Abandonments;
• Right-of-way availability or problems;
• Status of utility inventory report;
• Status of railroad agreements;
• Status of agreements;
• Resolutions;
• Status of permits or other environmental requirements;
• Potential staging or spoil areas within or adjacent to the project limits;
• Anticipated letting and construction completion dates and if Critical Path Method (CPM) Scheduling item is required;
• Anticipated coordination problems with other Department projects or projects constructed by others (e.g., overlapping maintenance and protection of traffic);
• Any other special problems such as coordination with other states or Canada for projects at the border; and,
• Fund source participation limits when applicable.

Each of the reviewers evaluates the contract materials from the perspective of their specialty and involvement in the project. The reviews in the ADP phase provide a formal opportunity for reviewers to communicate to Design the need for changes or additions to the contract documents, prior to PS&E.

The Regional Estimating Engineer will review the evolving estimate for the reasonableness of unit price estimates if requested by the Project Manager. Comments on the Environmental Commitments Checklist should be specifically requested from the Regional Construction Group and the Regional Environmental Contact.

21.3.8.1 Preparation for Handoff to Construction

A request to the Regional Construction Group for a constructability review for the project should be made at this time in project development, if one has not already been completed. The scope and type of Construction’s review is based on the project’s complexity. The constructability review addresses two fundamental questions - Can the project be bid rationally, and can it be built without significant contract change? On larger, more complex projects the constructability review may have already been conducted in earlier phases of the design. Regardless, ADP plans provide more detail to evaluate constructability at a more refined level, and it is important that Regional Construction Group be provided the opportunity to review ADP’s. Review for sufficient working clearances to utilities (per current OSHA guidance), traffic, and other hazards or obstacles will be of interest to Construction.

Designers should discuss the proposed contract duration and sequence of operations with the Construction Supervisor at this time. Work zone traffic control, seasonal limitations of work activities, time-related contract provisions, permit and agreement requirements, the shop drawing process, concrete curing periods, fabrication and delivery of materials, and any other factors in determining the contract completion date should be discussed. The collaborative development of a bar chart or other scheduling aid may be particularly useful for this purpose.
The ADP review process also offers Regional Construction the formal opportunity to communicate their needs on the project for an Engineer’s field office, inspection equipment, and other Section 637 items as noted in Section 21.4.3; the need for Section 639 Construction Contract Management Systems pay items; Training Requirements as noted in Section 21.4.3.2; special requests for CADD data or plots; other special requirements for the project; the designation of Specialty Items; as well as advance the project specific D/M/WBE/SDVOB goal setting process(es).

Designers should look for and encourage this type of feedback from Construction on the ADP’s, as it will help in finalizing the contract documents and tailoring the design data provided to Construction with the Handoff Memo (See Section 21.13).

Replace the existing §21.9.2.5 B.14 guidance with the following:

**21.9.2.5 PS&E Transmittal Memo**

B.14. **Construction Contract Goals**:

Construction contract goal setting is a collaborative process initiated no later than Advance Detail Plan (ADP) review to produce project specific goals to be included in the PS&E submission (refer to §21.3.8).

B.14.a Federally Funded Contracts with Disadvantaged Business Enterprise (DBE) Goals

For projects funded wholly or partially with any amount of federal funds, include the contract Disadvantaged Business Enterprise (DBE) goal, submit the approved Construction Contract DBE Goal Assessment Form (File name: Dnnnnnnn_R#_DBE Goal Determination), and place a copy in the project Record Retention folder (ref EI 17-005).

B.14.b State Funded (Non-Federally Funded) Contracts

For 100% state-funded (Non-Federally Funded) projects, include the Minority Business Enterprise (MBE), Women’s Business Enterprise (WBE), and Service-Disabled Veterans Owned Business (SDVOB) goals for the project. If the goals differ from the current NYSDOT MWBE Goal Plan or statutory SDVOB goal, also submit the applicable Waiver form(s) approved by the Office of Civil Rights (File names: Dnnnnnnnn_R#_Approved M/WBE Waiver and/or : Dnnnnnnnn_R#_Approved SDVOB Waiver), and place a copy in the project Record Retention folder (ref EI 17-005).

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2 Detailed goal setting guidance and forms are available on the Office of Civil Rights website.