

Good Faith Efforts

DBE Program

In order to be responsible and/or responsive a bidder must make good faith efforts to meet the goal.

This requirement can be met in either of two ways:

- ❑ **Meet the goal documenting commitments for participation**
- ❑ **If not successful, in whole or part, show all necessary and reasonable steps performed to achieve the goal**

Good Faith Efforts

The following guidelines are recommended for documenting those efforts. They are not mandatory, nor intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

Good Faith Efforts

Solicit all reasonable and available means the interest of all certified DBEs listed in the Texas Unified Certification Program Directory.

<http://www.dot.state.tx.us/business/tucp/default.htm>

The solicitation must be done within sufficient time to allow the DBEs to respond.

Appropriate steps must be taken to follow up initial solicitations.

- ❑ **Provide a list of all DBEs notified include phone numbers and addresses. Indicate the follow-up efforts made for each firm**
- ❑ **Provide copies of any advertisements of subcontracting opportunities and the dates the advertisements published**

Good Faith Efforts

Selecting portions of the work to be performed by DBEs to increase DBE goals will be achieved.

Where appropriate, break out contract work items into economically feasible units, even if self performance is preferred.

- ❑ **Provide a breakdown of the units of items you intend to subcontract on this project**

Good Faith Efforts

Provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- ❑ **Furnish a list of DBEs provided plans, specifications, and requirements of the contract**
- ❑ **Indicate the date that the information was provided**

Good Faith Efforts

Additional costs involved in finding and using DBEs is not in itself sufficient reason for failure to meet the goal, as long as such costs are reasonable.

Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- ❑ **Provide all quotes received from DBEs that were not submitted as a commitment**
- ❑ **Provide the quotes received from contractors that successfully competed with a DBE**

Good Faith Efforts

Do not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

- ❑ **Provide a list of any DBEs that were rejected as unqualified and indicate the basis for determining the firm as unqualified**

Good Faith Efforts

Make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

- ❑ **Provide a list of DBEs that were assisted indicating the type of assistance given**

Good Faith Efforts

Selecting portions of the work to be performed by DBEs to increase DBE goals will be achieved. Where appropriate, break out contract work items into economically feasible units, even when the contractor might otherwise prefer to self perform the work items

- ❑ **Provide a breakdown of the units of items you intend to subcontract on this project**

Good Faith Efforts

Commercially Useful Function

DBE Program

How is DBE participation counted toward goals?

When a **DBE** participates in a contract, only the **value** of the work actually **performed by the DBE** is eligible for goal credit.

The **entire amount** of that portion **must be performed** by the **DBE's own forces**.

That **includes the cost of supplies and materials** obtained by the **DBE** for the **work of the contract**.

If a **DBE subcontracts part of their work to another firm**, the value of the subcontracted work may be counted toward **DBE goals only if** the **DBE's subcontractor/subprovider** is itself a **DBE**.

Work that a DBE subcontracts **to a non-DBE firm** does not count toward DBE goals.

Commercially Useful Function

Goal credit is eligible if the **DBE** contractor is performing a commercially useful function on that contract.

A **DBE** performs a commercially useful function when it is responsible for execution of the work and is carrying out its responsibilities by actually **performing, managing, and supervising** the work involved.

Commercially Useful Function

The **DBE** must also be responsible, with respect to materials and supplies used on the contract, for **negotiating price, determining quality and quantity, ordering the material, and installing** (where applicable) and paying for the material itself.

A **DBE does not perform** a commercially useful function if its role is **limited to that of an extra participant** in a transaction, contract, or project through which funds are passed in order to obtain **the appearance of DBE participation**.

A DBE must **self perform** at least **30 percent** of the total cost of its contract with its own work force.

Commercially Useful Function

Substitution/ Replacement

DBE Program

A prime contractor **can not terminate** a committed DBE subcontractor/subprovider without Department prior written consent.

This includes, but is not limited to, instances in which a prime contractor **seeks to self perform** work originally designated for a DBE or those of an **affiliate**, a **non-DBE firm**, or with **another DBE firm**

Substitution/ Replacement

The Department will determine if the reasons stated reflect good cause to terminate.

Examples of **good cause** circumstances:

- ❑ DBE fails or refuses to **execute** a written contract
- ❑ DBE fails or refuses to **perform** the work of its subcontract
- ❑ DBE becomes bankrupt, insolvent, or **exhibits credit unworthiness**
- ❑ DBE **voluntarily withdraws** from the project and provides to the prime written notice of its withdrawal

Substitution/ Replacement

Examples of **unacceptable** causes for termination:

Prime contractor seeks to **self perform work** originally designated for the DBE or those of an **affiliate**, a **non-DBE** firm, or with **another DBE** firm is not acceptable.

Prime contractor seeks to terminate a DBE it relied upon **to obtain the contract** and thereafter substitute another DBE or non-DBE contractor.

Substitution/ Replacement

If the termination approved the prime contractor must make good faith efforts to **find another** DBE subcontractor/subprovider to substitute for the original DBE.

These good faith efforts shall be directed at finding another DBE to perform **at least the same amount** of work under the contract as the DBE that was terminated, to the **extent needed** to meet the contract goal.

Substitution/ Replacement

Commitments

DBE Program

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