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## Disadvantaged Business Enterprise (DBE) Good Faith Efforts (GFE)

The Office of Diversity, Equity & Opportunity (ODEO) determines eligibility and certifies DBEs in Rhode Island. The Rhode Island Department of Transportation (DOT) ensures statewide compliance with the RIDOT federal non-discrimination and affirmative action obligations as a condition of continued federal funding for highway construction. RIDOT promotes opportunities for socially and economically disadvantaged individuals to participate on federally funded highway projects through the DBE program.

It is RIDOT's policy to ensure compliance with Title VI of the Civil Rights Act of 1964, related statutes and regulations so that no person shall be excluded from participation in, or be denied benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance from the U.S. Department of Transportation on the ground of race, color, sex, age disability, or national origin.

### What are Good Faith Efforts (GFE)?

RIDOT projects with federal funding are assigned a DBE Goal, bidders have an obligation to meet the goal set for the project. When a contractor does not meet the DBE Goal set for a project, the contractor must demonstrate they made Good Faith Efforts to meet the goal.

### What type of actions, when taken prior to the bid opening, adequately support your GFE?

- Used the proposal's bid items list to determine the types of work you will subcontract.
- Searched DBE Directory for DBEs certified to do the work selected.
- Solicited DBEs; followed up with those who did not respond.
- Tracked calls, faxes, and emails used to solicit DBEs.
- Asked large subcontractors to solicit DBE work for a portion of their work.
- Advertised in sources likely to attract DBEs.
- Compiled documentation and submitted to prove your efforts to meet the goal.

### What needs to be tracked in your DBE solicitation contacts list?

- Date of initial contact
- Date(s) of follow-up, if required
- DBE's response(s) (or non-response)

### When is a follow-up contact required?

At minimum, a follow-up contact is required if a DBE did not respond to the initial contact. A follow-up also is appropriate if a DBE indicated they would be bidding and no bid has been received, or under any other appropriate scenario. If a DBE has declined an opportunity to bid, a follow-up is NOT required.

### Does a fax or email receipt to a DBE meet the contract requirement?

Yes. Bidders may fax and email solicitations to DBEs. Fax and email transmittal logs are to be maintained for documentation. Be sure to include the full business name and contact information of the subcontractors contacted. The bid solicitation must provide DBEs with adequate information to provide a quote.

### What factors can you consider when choosing a DBE?

Use good business judgment in negotiating with DBE and non-DBE subcontractors. Consider both the price and firm's capabilities along with the project goal. That there may be additional costs involved in finding and using DBEs is not, in itself, sufficient reason for a bidder's failure to meet the DBE goal, as long as such costs are reasonable. The ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts to meet a project's DBE goal. Prime contractors are not, however, required to accept non-competitive quotes from DBEs if the price difference is excessive or unreasonable.

### Do you have to use a non-competitive or excessive DBE quotes?

No, non-competitive or excessive DBE quotes may be rejected by the bidder. However, a bid item cost difference analysis must be submitted, e.g. a table comparing the DBE vs. non-DBE bid item costs.

### What GFE evidence must be submitted at the time of bid opening?

The DBE Special Provisions located in the project proposal details the specific requirements. Scan and submit your GFE package in one electronic file.

- Cover letter summarizing your GFE
- Good Faith Efforts Form
- Attachment A to the Good Faith Efforts Form (if applicable)
- DBE Commitment/Utilization Plan
- Written confirmation of commitment by DBEs
- Contact records stating the DBE firm name and contact information, times, dates, and result of contacts with DBE firms
- A table (excel worksheet) showing the cost difference between only the low non-DBE and low DBE quote for the same items.

If OCR determines the bidder's GFE is inadequate and/or the bidder's submission does not follow the applicable DBE Special Provisions, the bidder's proposal may be deemed unresponsive and subsequently, RIDOT may reject the bid.

**EXAMPLE:** Acme Corporation bids on a highway construction contract being let by the Sagebrush State Highway Administration (SSHA). The contract has a 5 percent (5%) DBE contract goal. Acme proposes that the W.E. Coyote Company (WEC) will meet the goal by performing a subcontract to provide mitigation measures for the effects of the project on a protected bird species. WEC is a certified DBE in the field of traffic control, but is not certified by the Sagebrush UCP in wildlife impact mitigation. SSHA cannot count WEC's proposed work toward the DBE goal for the contract. Unless it has obtained 5 percent DBE participation from other sources, Acme has failed to meet the goal.

In the above example, SSHA would deem the Acme bid/offer as non-responsive for failing to meet the DBE contract goal of 5 percent (5%) unless it has obtained 5 percent (5%) DBE participation from other sources. Acme could not document good faith efforts under 49 CRR 26.53(a)(2) on the basis of a sincere but mistaken belief that WEC was certified to do the work proposed for the contract.

What if we fail to meet the project goal and the OCR determines we have not made a GFE?

If the GFE review finds the low bidder is in non-compliance as outlined in the DBE Special provision, the bidder has ten (10) calendar days to request administrative reconsideration. If, after the administration reconsideration the non-compliance finding is upheld, the low bidder will be declared non-responsive. The Department may then initiate procedures to award the contract to the next low bidder.

What is administrative reconsideration?

Within ten (10) calendar days of notification of finding of GFE non-compliance, a bidder may request administrative reconsideration consistent with the procedures described in 49 CFR 26.53(d), and in RIDOT's DBE Program Plan published on its website. Essentially, the bidder can submit a letter explaining its argument challenging the GFE non-compliance decision; along with attached documentation to support the bidder's argument. The administrative reconsideration finding is final, and not administratively appealable to USDOT.