



# Good Faith Effort (GFE): At Bid & Closeout

Missouri Department  
of Transportation

# Overview



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- GFE At Bid Time
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- DBE Terminations and Substitutions
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# DBE Goals



- Goals established on federally funded projects.
- Set Construction and Professional Services DBE goals using the following documents/information:
  - Construction Estimate or Professional Services Estimate
  - Project Location – County
  - Project Dollar Value
  - DBE Availability

# Subcontracting Opportunities



- Construction:
  - Concrete, Electrical, Excavation, Fencing, Guardrail, Hauling, Landscaping, Liquid Asphalt, Pavement Marking, Sign Erection, Supply Items, Surveying, and Traffic Control
  
- Professional Services:
  - Threatened and Endangered Species Documentation, Roadway Design, Bridge Design, Sidewalk/ADA/Bicycle/Pedestrian Design, Signing & Striping Plans, Materials Testing, Surveying – Construction Staking, Roadway Layout, and Bridge Layout, and Construction Engineering/Construction Inspections



# DBE Good Faith Effort: At Bid Time



# Responsive Bidder



- Submit all DBE participation by the due date.
- All listed DBE's must be certified at the time of bid as listed in the MRCC Directory.
- All listed DBE's must be certified in NAICS codes applicable to the work the DBE will perform – otherwise, no DBE credit can be given.
- DBE commitments cannot exceed the bid amount for the given item of work.

# Certification & NAICS Codes



- MRCC DBE Directory
  - Lists DBE firm demographics
  - NAICS Codes certified to perform
  - Remarks section for additional information

CODE	DESCRIPTION	REMARKS
238910	Site Preparation Contractors	Backfilling, Blasting, Boring, Building demolition, Caisson construction, Concrete breaking and cutting, Culvert and bridge removal, dirtmoving, excavating, Grading, Pile driving, trenching
238910	Site Preparation Contractors	Backfilling, construction, Excavating, earthmoving, or land clearing contractors, Grading construction sites,
238910	Site Preparation Contractors	Site Preparation Contractors Excavating, earthmoving, or land clearing contractors (residential only)

- DBE firm's certification contains NAICS codes
  - ABC Construction Contracting, LLC
    - Certified with the following NAICS Codes
      - 561730 Landscaping Services
      - 484220 Specialized Freight (except Used Goods) Trucking, Local
      - 238910 Site Preparation Contractors

# Certification & NAICS Codes (cont.)



- DBE firm's certification contains NAICS codes
  - ABC Construction Contracting, LLC
    - Certified with the following NAICS Codes
      - ~~561720 Landscaping Services~~
      - 484220 Specialized Freight (except Used Goods) Trucking, Local
      - 238910 Site Preparation Contractors
  
- “Listed in the MRCC DBE Directory” = DBE certified with
  - MoDOT
  - City of Kansas City
  - Kansas City Area Transportation Authority
  - Mid-America Regional Council (Kansas City)
  - City of St. Louis – Lambert Airport
  - Bi-State Development (St. Louis)



# Good Faith Efforts



- Consider: quality, quantity, and intensity of efforts
- Active and Aggressive efforts to meet the DBE goal
- Pro forma efforts insufficient
- GFE's are a judgement call – no quantitative formula

# Good Faith Effort: Market Research



- Identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract.
  - Attendance at pre-bid and business matchmaking meetings and events.
  - Advertising and/or written notices
  - Posting of Notices of Sources Sought and/or Requests for Proposals
  - Written notices or emails to all DBEs listed in the MRCC directory to firms that specialize in the areas of work desired and located in the area or surrounding areas of the project.

# Good Faith Effort: Unbundling



- Selecting portions of work to be performed by DBEs
  - Increases likelihood that DBE goals will be achieved.
- Breaking out contract work items in economically feasible units (smaller tasks or quantities) to facilitate DBE participation even when primes might otherwise prefer to perform these work items with its own forces.
- May include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- Provide interested DBEs with adequate information about the plans, specifications, and requirements in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

# Good Faith Effort: Negotiation



- Negotiation in good faith with interested DBE's.
  - Bidder's responsibility to make a portion of the work available to DBE subcontractor and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, to facilitate DBE participation.
  - Evidence of negotiation includes names, addresses, phone numbers of DBEs that were considered; description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs for perform the work.

# Negotiation, Cont'd



- A bidder would consider several factors in negotiating with subcontractors, including DBEs, and would take a firm's price and capabilities as well as contract goals into consideration.
- The fact that there may be some additional costs involved in finding and using DBEs is not in itself a sufficient reason for a bidder's failure to meet the contract DBE goal, if such costs are reasonable.
- The ability or desire of a prime to perform the work of a contract with its own forces does not relieve the bidder of the responsibility to make good faith efforts.
- Primes are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

# Insufficient Reasons



- Bidders may not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
  
- Illegitimate causes for rejection or non-solicitation of bids:
  - Contractor's standing within its industry
  
  - Membership in specific groups, organizations, or associations and political or social affiliations
  
  - DBE quote is not the lowest received
  
  - Inability to find replacement DBE at original price is not alone sufficient to support a finding that a good faith effort has been made to replace the original DBE.

# Other Bidders



- Review the performance of other bidders in meeting the contract goal.
  - Were all other bidders able to meet the contract goal?
  - Did the apparent low bidder's submitted DBE participation meet or exceed the average DBE participation obtained by other bidders?
  - This, along with other factors, can be viewed as evidence of the apparent low bidder having made good faith efforts.

# GFE Encouragements



- BDC encourages primes to...
  - Solicit firms only listed in the MRCC DBE directory
  - Cast a directory wide net when soliciting DBEs
  - Solicit only the DBE firms who are DBE certified to do the work
  - Allow DBE firms to submit a quote or proposal on all work types they are certified to perform on a project





# DBE Good Faith Effort: At Closeout



# DBE Participation Commitment



- Prime contractor committed to a set percentage & dollar amount in DBE participation at beginning of project.
- At closeout, prime must show that they have reached that commitment.
- Prime contractors are not penalized for DBE goal shortfall attributable to line-item underruns affecting DBE firms on the project.
- All other circumstances warrant a Good Faith Effort review.

# DBE Terminations/Substitutions



- Prime contractor and prime consultants must have prior written approval from BDC for any DBE firm terminations or substitutions.
  
- Without approval, prime contractors and prime consultants are ineligible for reimbursement of items in which a DBE was terminated or substituted.
  - Protection to DBE's listed at time of award to meet the DBE goal. Any DBE's/line items that exceed the goal do not have this protection.

# Steps for Termination



- Step #1: Contact BDC Division within MoDOT
  - To identify Contract Monitoring Specialist assisting with the project.
    - Email [dbe@modot.mo.gov](mailto:dbe@modot.mo.gov)
  - Specialists Per District
    - NE: [Laura.Bouslaugh@modot.mo.gov](mailto:Laura.Bouslaugh@modot.mo.gov) or (573) 751-1355
    - NW: [Laura.Bouslaugh@modot.mo.gov](mailto:Laura.Bouslaugh@modot.mo.gov) or (573) 751-1355
    - KC: [Kamaria.Sanders@modot.mo.gov](mailto:Kamaria.Sanders@modot.mo.gov) or (816) 607-2055
    - CD: [Rhonda.Wilson@modot.mo.gov](mailto:Rhonda.Wilson@modot.mo.gov) or (573) 751-4309
    - SL: [April.Hendricks-Brown@modot.mo.gov](mailto:April.Hendricks-Brown@modot.mo.gov) or (314) 453-1872
    - SW: [Martin.Sturgeon@modot.mo.gov](mailto:Martin.Sturgeon@modot.mo.gov) or (816) 607-2162
    - SE: [Prenness.Josey-Person@modot.mo.gov](mailto:Prenness.Josey-Person@modot.mo.gov) or (314) 453-1877  
*(Also, SL district counties of Franklin and Jefferson)*
  - Communicate with specialist and explain why termination is being requested.

# Steps for Termination (cont.)



- Step #2: Notify the DBE firm of termination
  - Send DBE firm notice of termination via letter via email
  - Letter must explain in detail the reason for termination
    - Provide detailed reason for termination
    - Request a response from DBE firm within 5 business days
  - Cc: BDC Contract Monitoring Specialist

# Steps for Termination (cont.)



- Step #3: Complete and submit DBE Termination Form
  - Include a copy of the email sent to the DBE firm
  - Include a copy of the termination letter emailed to the DBE firm
  - Include a copy of the response email/letter from the DBE firm
  - Any additional supporting documentation
  - DBE Termination form is located on MoDOT website at:
    - [www.modot.org](http://www.modot.org)
      - ↓
      - Doing Business with MoDOT → Contractor Resources → Forms for Contractor Use →  
Contract Compliance Related Forms and Posters → DBE Forms →  
DBE Termination Form and DBE Change Form

# Counting DBE Participation



- Value of the work performed by the DBE.
  - Includes cost of supplies, materials, & equipment leased or purchased.
  - Fees & commissions charged by DBE firm to provide bona fide services such as professional, technical, consultant, etc. provided that the fee is reasonable and not excessive.
  - Any work subcontracted by the DBE does not count unless the lower tier sub is also a DBE.

# Commercially Useful Function



- Count expenditures only if the DBE performs a commercially useful function
  - DBE firm must be responsible for execution of work by performing, managing, and supervising.
  - DBE firm must be responsible, with respect to materials/supplies for negotiating price, determining quality and quantity, ordering material, installing (as applicable) and paying for the material.



# Good Faith Efforts



- Consider: quality, quantity, and intensity of efforts
- Efforts that one can reasonably expect a contractor to take if they are actively and aggressively trying to attain DBE participation sufficient to meet the DBE goal.
- Pro forma efforts are not good faith efforts to meet the DBE contract requirements.
- The sufficiency of the firm's good faith efforts is a judgement call. Determinations should not be made using quantitative formulas.

# Good Faith Efforts: Questions



- What caused the DBE goal shortfall? Was it out of the contractor's control (DBE refused to perform, weather challenges, etc.)
- Were there other items in the contract that a DBE could have performed? Where in the timeline did the shortfall occur? Were there sufficient opportunities to solicit additional participation?
- Did the contractor act in good faith and attempt to remedy the goal shortfall?

# Questions???

