

U.S. Department of Transportation
Federal Highway Administration

EFFECTIVE DBE GOOD FAITH EFFORTS (GFEs)



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SESSION OBJECTIVES

- Describe what is Good Faith Efforts (GFEs) and the procedures;
- Identify the required DBE information, along with the timeframes, submitted by contractors;
- Recognize the guiding principles to evaluate GFEs of the contractor; and
- Explain the Terminations and Substitutions process.

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GFEs OVERVIEW

- GFE only apply to contract goals.
- Contract is awarded only to a bidder who makes GFEs to meet it.
- DBE commitment information required.
 - Matter of responsiveness
 - Matter of responsibility
- State DOT must evaluate GFEs documentation.
 - 49 CFR 26 Appendix A
- State DOT required to offer an opportunity for administrative reconsideration.

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GFEs COMPLIANCE

- Once you submit the commitment (DBE) information, you cannot change it without prior written approval.
- You must make DBE subcontracts available upon request (GFEs 26.53(h) and 26.53(j)).
- Failure of the prime contractor to carry out the DBE Program (see 26.13(b), including GFE, is a material breach, that may result in termination or other remedies as the State DOT deems appropriate.



REQUIRED DBE INFORMATION SUBMISSION AND TIMEFRAMES



DBE INFORMATION SUBMISSION TIMEFRAME

Responsiveness

- Bidders/offerors required to submit DBE information at the time of bid

Responsibility

- Bidders/offerors required to submit DBE information no later than 5 days after bid opening



BIDDER'S DBE COMMITMENT (26.53)

- Names and addresses of DBE that will participate as subcontractors.
- Description of the work that each DBE will perform and dollar amount.
- Bidder confirms DBEs listed are certified under NAICS that corresponds with the work DBE intends to perform.
- Written documentation of the bidder's commitment to use the DBEs listed.
- Written confirmation from each DBE listed.



GFEs AND CONTRACT GOALS

If the contract goal is not met:

- The bidder must provide the State DOT with documentation to show that it used "GFEs" to meet the contract goal.



EXPECTATIONS OF THE BIDDERS

- ❖ Bidders must take all the necessary and reasonable steps to achieve a DBE goal.
- ❖ Effective GFEs are those actions expected of a bidder to take, if the bidder were actively and aggressively trying to meet the contract goal.



GFEs - APPENDIX A

Few examples of GFEs activities:

- Conduct market research to identify small business contractors and suppliers.
- Solicit through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract.
- Select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
- 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 with their offer for the subcontract.



SOLICITATION



- Written solicitations should be sent to certified DBEs listed to do work made available by bidder;
- Contractor must document solicitation;
- Solicit DBEs who can do type the work you will be subcontracting; and
- Adequate time must be allowed for DBE to respond.



SOLICITATION




Solicitation Information must include:

- Bidder contact information – phone, email, fax number, etc.
- Project number
- Types of work made available
- Bid date and time



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GFEs EVALUATION



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GFEs GUIDING PRINCIPLES

- GFEs evaluation begins with the amount of work made available;
- You cannot reject a DBE because they are not the lowest bidder;
- Do not submit meaningless paperwork (*contacts/solicitations*); and
- Responding to all GFEs (*Appendix A*) does not demonstrate adequate GFEs.

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GFEs EVALUTATION FACTORS

- Did bidder make enough work items available to meet the goal?
- Did bidder solicit available DBEs for work items?
- Did bidder follow up with specific DBEs?
- Did 2nd & 3rd bidders get more DBE commitments?

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GFEs EVALUATION FACTORS

Review performance of other bidders:

- When apparent low bidder fails to meet the contract goal, but the second low bidder meets it, you may reasonably raise the question of whether, with additional efforts, the apparent low bidder could have met the goal.



GFEs: ADMINISTRATIVE RECONSIDERATION PROCESS

- If bidder's good faith efforts are deemed inadequate, the bidder must be offered an opportunity for administrative reconsideration;
- Give opportunity to provide written documentation or oral argument; and
- Reconsideration official cannot take part in the original determination.



TERMINATIONS AND SUBSTITUTIONS



CONTRACT PROVISION: UTILIZE LISTED DBEs



Each prime contract must include a provision:

- The contractor must utilize the specific DBEs listed to perform the work and supply the materials. (Note: The prime contractor cannot terminate a DBE listed without the State DOT's prior written approval).
- The prime contractor will not receive any payments for work not performed or materials not supplied by the listed DBE. (Note: Unless the State DOT provides prior written approval).



TERMINATIONS & SUBSTITUTIONS

- The State DOT (DBE Liaison) can only give prior written approval for Good Cause.
- Pertains to pre-and post award



TERMINATIONS & SUBSTITUTIONS GOOD CAUSE

What Constitutes Good Cause?

- DBE fails or refuses to sign contract
- DBE fails or refuses to perform to normal industry standards
- DBE fails to meet prime's reasonable bond requirements
- DBE goes bankrupt
- DBE is suspended or debarred (ineligible for fed. contracts)



TERMINATIONS & SUBSTITUTIONS GOOD CAUSE (cont.)

What Constitutes Good Cause?

- DBE is not a responsible contractor
- DBE voluntarily withdraws
- DBE is ineligible to receive DBE credit for work type
- DBE (*key person*) death or disability
- Other documented good cause



TERMINATIONS & SUBSTITUTIONS NOTICE & TIMEFRAME

Before the prime contractor transmit to the State DOT its request to terminate and/or substitute a DBE subcontractor, the prime contractor must:

- Give written notice to the DBE subcontractor of its intent to request to terminate and/or substitute and the reason for the request; and
- Include a copy of the notice to the State DOT.



TERMINATIONS & SUBSTITUTIONS NOTICE & TIMEFRAME

- The DBE has five days to respond to the notice of why it objects to the proposed termination/substitution, and why the State should not approve it.
- The State DOT may provide a response period shorter than five days.



TERMINATIONS & SUBSTITUTIONS

- When a DBE is terminated or replaced (*with permission*), the State DOT must require the contractor to make GFEs to find another DBE to perform at least the same amount of work needed to meet the contract goal .
- If the State DOT requests GFE documentation, the contractor must submit the information within 7 days, (*timeframe can be extended 7 days*) and recipient (*State DOT*) shall provide written determination of sufficiency of GFEs to the contractor. (*26.53 (g)*)



GFE Summary

GFE only apply when there is a DBE goal in the contract.

Contractors must follow the GFE procedures:

- Provide DBE commitment information.
- Provide documented GFE for State's evaluation (*Appendix A lists suggested GFEs*).
- You have an opportunity for administrative reconsideration.
- You cannot terminate or substitute a DBE without prior written consent from the State DOT.



GFE SUMMARY

- State DOT can only award to a bidder who makes a GFE to meet the contract goal.
- State DOT must include a contract clause stating contractors will not receive payment, if they don't use the listed DBEs.
- Failure to carry out the DBE requirements can be a material breach; therefore the State DOT will carry out contract remedies (26.13 (b)).



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