



## BUSINESS ENGAGEMENT & COMPLIANCE OFFICE

### CONSULTANT CERTIFICATION OF GOOD FAITH EFFORTS

*(Submit completed GFE pages 1 – 6 only with back-ups, if any)*

#### Purpose

The certification's intent is to document the good faith efforts undertaken by the Consultant in soliciting and utilizing DBE firms to meet the DBE participation requirements for the contract/project. The completed certificate will assist ADOT to determine if the Consultant performed its due diligence, took all necessary and reasonable steps to secure DBE participation for the referenced contract/project and resulted in obtaining comprehensive good faith efforts. ADOT Business Engagement & Compliance Office (BECO) will determine if the Consultant made satisfactory good faith efforts to secure sufficient DBE participation to meet the DBE goal. The burden of proof rests with the Consultant. **Failure to provide good faith efforts to BECO's satisfaction will result in the rejection of the proposal/modification.** However, BECO will reconsider Consultant's GFE resubmittal if Consultant has adequately and sufficiently documented its good faith efforts in obtaining DBE participation.

#### General

The information requested in this certificate is the minimum information required by BECO to evaluate your firm's good faith efforts. BECO reserves the right to request further documentation from the Consultant/Subconsultant(s) to support and validate actions undertaken to secure DBE participation and meet the DBE goal for this contract/task order.

#### Attestation

I, (Name) \_\_\_\_\_, do hereby acknowledge that I am the (Title) \_\_\_\_\_ of (Name of Firm) \_\_\_\_\_ and the Consultant selected for the ADOT project listed below:

Contract No.	Task Order No.	TRACS No.	Project Name	Estimated Contract Amount *	DBE Percentage	
					ADOT Goal	Proposed

\* Estimated Contract Amount **must** include any previous amounts of the Contract or Task Order.

Provide a brief summary on why you believe your firm is unable to meet the DBE participation goals on this contract/task order. Attach additional pages if necessary.

I hereby certify I demonstrated comprehensive good faith efforts to solicit and utilize DBE firms to meet the DBE participation requirements of this contract/modification by my responses to the following:

**GFE Activities**

**A. Notifying DBE Firms of Contracting Opportunities**

1. List all DBE firms assigned to this contract:

<b>DBE Firms Name and Address</b>	<b>NAICS / Commodity Code</b>	<b>NAICS / Commodity Code Description</b>

2. Outreach: List all firms and assigned work tasks for this contract/task order:

<b>Firm Name</b>	<b>Assigned Work Tasks</b>

3. List all DBE associations, organizations or publications that received announcements or written notifications from the Consultant, date published/sent and provide follow-up activity details. Provide explanation if no follow-up activities were performed. BECO reserves the right to request copies of all announcements or notifications listed.

Published Announcement / Publication <i>(Provide brief description)</i>	Date Sent	DBE Association / Organization	Contact Person	Date of Follow-Up Activities

4. Was BECO contacted at (602) 712-7761 to request assistance in the recruitment of DBE firms?

Yes      Name of individual who contacted BECO: \_\_\_\_\_  
 Telephone number provided: \_\_\_\_\_  
 Date contacted: \_\_\_\_\_  
 BECO representative contacted: \_\_\_\_\_  
 Written correspondence attached       Yes  No

No      Explain:

**B. Identifying Subconsultant Work Units**

The Consultant is strongly encouraged to select portions of work to be subcontracted to increase the likelihood of achieving the DBE goals. In selecting work to be subcontracted, the Consultant shall consider where it is appropriate to break down the project into economically feasible work units to facilitate and promote DBE participation ([Appendix A to Part 26, Section IV \(B\)](#)).

1. Which portions or sections of the Scope of Work are able to be subcontracted?

2. Is there a DBE firm currently on the contract/project team able to perform the Scope of Work above?

Yes    Name of firm \_\_\_\_\_  
 No

**C. Providing Assistance to DBEs**

1. Explain any efforts undertaken to provide DBE firms with adequate information about contract/task order Scope of Work and requirements of this contract ([Appendix A to Part 26, Section IV \(C\)](#)):

2. Describe any efforts undertaken to assist interested DBE firms in obtaining insurance required by ADOT or the Consultant ([Appendix A to Part 26, Section IV \(F\)](#)):

3. Describe any efforts undertaken to assist interested DBE firms in obtaining necessary assistance or services where applicable ([Appendix A to Part 26, Section IV \(G\)](#)):

4. Describe any efforts used to obtain services of available minority/women community organizations ([Appendix A to Part 26, Section IV \(H\)](#)).

**D. Soliciting Interested DBE Firms**

Consultants shall solicit services in good faith with all interested DBE firms. Proposals from interested DBE firms shall not be rejected by Consultants without sound business justification.

1. Provide the firm name, contact information and work proposed of all DBE firms that submitted a proposal for this contract/task order that were not selected. The reason for rejection must be provided for BECO to determine the Consultant's satisfactory good faith efforts. If no DBE proposals were rejected, state "NONE".

DBE Firm and Contact Person	Work Proposed	Explanation for Rejecting Proposal



## APPENDIX A TO PART 26 — GUIDANCE CONCERNING GOOD FAITH EFFORTS

**Note:** “YOU” means the Agency (ADOT) in the following section of this requirement.

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.
  - A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
  - B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
  - C. Providing 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.
  - D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a 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 to perform the work.
    - (2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, 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. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Note: Contacting BECO (602 712-7761) for assistance in identifying certified DBEs that can perform work on a contract or task order is also considered a strong factor in making good faith efforts.

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### GFE Checklist

1. Review Scope of Work (SOW) for subcontracting opportunities.
2. Did firm make reasonable efforts to designate economically feasible and meaningful units of work for a DBE that meets or exceeds the DBE goal?

Keep in mind that selected DBEs must perform *commercially useful function* (CUF) as required by [49 CFR §26.55](#).

3. Are there DBE firms on the contract team that can do the work? If not, the firm must solicit other DBEs through the DBE Directory to perform work to meet or exceed the goal.
4. Some projects may be too small or do not provide meaningful units of work for subcontracting opportunities.
5. ADOT PMs must keep in mind that DBEs must be utilized when developing their SOWs. Splitting of work units into small task to circumvent the utilization of Subconsultants and DBEs violates the federal regulations.
6. When providing good faith documentation, it is not good enough to say that project is too small to include DBEs. Firm must explain the SOW and why no subcontracting opportunities are possible.
7. When providing good faith documentation, firms must include:
  - a. Date, contact name of staff they contacted at BECO for assistance
  - b. List of DBE firms the contacted to do the work
  - c. Any evidence of negotiations with the DBE firms
  - d. Evidence of efforts to reach out to DBE firms
8. Assistance provided to DBEs should include efforts to assist the DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project-related assistance.

**This is not intended to be mandatory checklist not it is intended to be exclusive or exhaustive list of good faith efforts. Other factors or types of efforts may be relevant on a case-by-case basis as determined by BECO.**