

# PROFESSIONAL SERVICES CERTIFICATION OF GOOD FAITH EFFORTS

**General**

Complete all sections of the form and include all back-up documentation. Incomplete forms will be returned unprocessed. For the purpose of this form, project specific contracts shall be evaluated on a contract basis and on-call contracts will be evaluated on a task assignment by task assignment basis. **For on-call contracts, contractors must complete this form by detailing efforts made to find additional DBEs if their current DBEs are unable to perform the work needed for this task assignment.** If the information does not relate to the task assignment in review, this GFE will be denied. BECO reserves the right to request further documentation from the Contractor/Subcontractor(s) to support and validate actions undertaken to secure DBE participation and meet the DBE goal for this contract/task assignment.

**Attestation**

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

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

\* Estimated Task Amount must include any previous amounts of the Task Assignment.

Provide a brief summary on why you believe your firm is unable to meet the DBE participation goals on this task assignment. 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/task assignment in accordance with Section 14.0 of the DBE Provisions by my responses to the following:

**GFE Activities**

**1. Contacting BECO For Assistance**

Date contacted: \_\_\_\_\_ BECO Staff contacted: \_\_\_\_\_

Prime Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Brief summary of discussion and resolution:

Was a DBE Supportive Services Solicitation Request submitted?  Yes  No Submission Date \_\_\_\_\_

**2. Market Research and Soliciting Through All Reasonable Means**

List all DBE solicitations made for this contract/task assignment.

Solicitation Activity	Date	Name of Interested DBEs	Follow-Up Date

**3. Selecting Portions of Work to be Performed by DBEs**

List work items needed to be performed and include how work items were broken down into economically feasible units to facilitate DBE participation.


**4. Provide Interested DBEs With Project Information**

Explain how interested DBEs were provided with access to project information.

**5. Negotiate In Good Faith With Interested DBEs – When a non-DBE is selected over a DBE, attach copies of the DBE and non-DBE firms’ quotes.**

**A. Identify DBE firms in which negotiations were considered but were unsuccessful.**

DBE Firm Name & Contact Person	Address	Phone Number

**B. Explain why negotiations above were unsuccessful.**

DBE Firm Name	Explanation

**6. Having Sound Reason For Rejecting DBEs**

Explain why any DBE(s) was rejected for being unqualified.

DBE Firm Name	Explanation

**7. Assisting Interested DBEs – Bonding, Credit, Insurance**

Identify interested DBE firms in which assistance was provided in obtaining bonding, credit or insurance.

DBE Firm Name	Assistance Offered

**8. Assisting Interested DBEs – Equipment, Supplies, Materials, Related Services**

Identify interested DBE firms in which assistance was provided in obtaining necessary equipment, supplies, materials, or related assistance or services.

DBE Firm Name	Assistance Offered

**9. Minority/Women Community Organizations**

Identify minority/women community organizations used for providing assistance in the recruitment and placement of DBEs.

Organization Name	Contact Person	Assistance Requested

This is not intended to be a mandatory checklist nor is it intended to be an 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 ADOT BECO.

10. Other comments or information you want ADOT BECO to consider as part of your good faith effort.

**Affidavit**

The undersigned, (Name) \_\_\_\_\_, attest and declare under penalty of perjury in the second degree, and any other applicable state or federal laws, that the information provided on this certificate is true and correct to the best of my knowledge and belief.

Signature: \_\_\_\_\_  
Contractor/Authorized Representative

Date: \_\_\_\_\_

**Note:** *The GFE form must be signed by an authorized signatory for the Contractor/Subcontractor.*

ADOT BECO INTERNAL USE ONLY	
Date Received: _____	Received by: _____
Date Approved / Denied: _____ <i>(Circle one)</i>	Signature: _____
<b>Comments:</b>	

APPENDIX A TO PART 26— GUIDANCE CONCERNING GOOD FAITH EFFORTS

*The following section is provided to demonstrate the responsibility of the Department and the offeror in regards to Good Faith Efforts. References to “You” means the Department.*

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient 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, you have the responsibility 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, based on the regulations and the guidance in this Appendix.

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. Determinations should not be made using quantitative formulas.

- 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. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. This may include 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 State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

- (2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
  - 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 with their offer for the subcontract.
  - 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.
    - (1) 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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.
    - (2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original



DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- 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, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. 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 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. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

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

## Good Faith Efforts Tips

The intent of the Good Faith Effort Form is to document the good faith efforts undertaken by the Contractor in soliciting and utilizing DBE firms to meet the DBE participation requirements for the contract/project. The completed form will assist ADOT in determining if the Contractor 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 Contractor made satisfactory good faith efforts to secure sufficient DBE participation to meet the DBE goal. The burden of proof rests with the Contractor. **Failure to provide good faith efforts to ADOT BECO's satisfaction will result in the rejection of the proposal/modification.** However, ADOT BECO will reconsider Contractor's GFE resubmittal if Contractor has adequately and sufficiently documented its good faith efforts in obtaining DBE participation.

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?
3. Keep in mind that selected DBEs must perform *commercially useful function* (CUF) as required by [49 CFR §26.55](#).
4. Determine if there are 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.
5. Some projects may be too small or do not provide meaningful units of work for subcontracting opportunities. Any reason for this must be thoroughly explained.
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. Contractors must keep in mind that DBEs must be utilized when developing their offer. Arranging and planning work items to circumvent the utilization of Subcontractors and DBEs violates the federal regulations.
8. For on-call contracts, contractors must complete this form by detailing efforts made to find additional DBEs if their current DBEs are unable to perform the work needed for this task assignment.
9. When providing good faith documentation, Contractors 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
10. 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.