



PART 1

The Speedbumps of Good Faith Effort (Pre-Award and Post-Award)

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Objectives

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1. Training Overview
2. Good Faith Efforts (GFE) Standards
3. Pre-Bid/Pre-Proposal Good Faith Efforts Requirements
4. Pre-Bid/Pre-Proposal Good Faith Efforts Forms
5. Evaluating Good Faith Efforts
6. Post-Award Required Good Faith Efforts Requirements
7. GFE Best Practice Considerations



Pre-Bid/Pre-Proposal GFE: Getting Started

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- ☐ Become familiar with 49 CFR Part 26.53 and Appendix A
- ☐ Read and familiarize yourself with contract specifications related to the DBE program
- ☐ Review and practice searching for DBEs on DBE Directory (AZ UTRACS web portal)
- ☐ Contact ADOT BECO for information and clarification



Good Faith Efforts Condition for Contract Award



A contract with a DBE goal must be awarded to a **responsible** and/or **responsive bidder**, that makes good faith efforts (GFE) to meet the goal.

The bidder can meet this requirement in either of two ways:

1. Provide documentation that it will meet the goal

OR

2. Provide documentation that it has made adequate good faith efforts to meet the goal but was unable to do so



Good Faith Efforts

Level of Efforts



The bidder must show that it took all **necessary** and **reasonable** steps to meet the DBE goal.



- ☐ The efforts are ones 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
- ☐ Fact that some additional cost may be involved to find and use DBEs is not sufficient reason not to locate DBEs to meet contract goal
- ☐ Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.
- ☐ Making GFE should be the SOP. If a Prime is making adequate GFE DBE goal will be met most of the time

Pre-Bid/Pre-Proposal GFE:

1. Contact ADOT BECO



Contact the ADOT BECO (602-712-7761) in a timely manner for help in soliciting DBEs.



DBE Supportive Services staff will:

- ☐ Send out solicitation to all DBEs for your project
- ☐ Help Primes search for DBEs in Directory
- ☐ Provide proof that Prime reached out for assistance

Pre-Bid/Pre-Proposal GFE:

1. Contact ADOT BECO

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BECO DBE SS Staff Contact Information

□ Kent Lane - DBE Supportive Services Program Manager

□ Paula Brown – DBE Supportive Services Technician



Pre-Bid/Pre-Proposal GFE:

1. Contact ADOT BECO



- ☐ The contact must be made in sufficient time before bid submission to allow BECO to provide effective assistance.
- ☐ The bidder will not be considered to have made good faith efforts if the bidder failed to contact BECO

Pre-Bid/Pre-Proposal GFE:

1. Contact ADOT BECO



SAMPLE OF QUOTE SOLICITATION

(Enter: COMPANY NAME) is soliciting quotes from certified DBEs for the: (Enter: PROJECT LOCATION) (Example: Payson Winslow Highway SR 87 Limestone Wash Bridge)

Bidding Date: (Example: NOVEMBER 8, 2013)

Project No: (Example: STP-BR-087-C(203)T)

Tracs No: (Example: 000 YU YYU SS86101C)

Bids due Contractor: (Example: NOVEMBER 4, 2013)

DBEs interested in bidding this project should contact:

(Example: John Doe at 602 777 0000 or via email estimator@live.com)

(Enter: COMPANY NAME) is interested in subcontracting the following categories of work:

(Enter bid items for bid below)

- Concrete
- Seeding
- Paving
- Trucking
- Excavation
- Survey
- Traffic Control

Pre-Bid/Pre-Proposal GFE: 2. Soliciting DBEs

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Solicit certified DBEs through all reasonable and available means:

- ☐ Attendance at pre-bid meetings and project networking events
- ☐ Paper - Advertising and/or written notices in general circulation and/or Trade Associations and Small Business Groups (at least 10-15 days prior to bid)
- ☐ Electronic - Website, E-newsletters, Email blasts, Facebook, etc.



Pre-Bid/Pre-Proposal GFE: 2. Soliciting DBEs

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- ❑ Outreach - Attending ADOT BECO and other small business, women and minority organizations' business events, networking sessions and resources
- ❑ Utilizing ADOT BECO DBE solicitation service
- ❑ Hosting Subcontractor/DBE informational open houses or workshops
- ❑ Utilizing DBE Directory

Pre-Bid/Pre-Proposal GFE: 2. Soliciting DBEs



Solicitations should contain, at the very minimum:



- ☐ Your company name
- ☐ Name of contact person
- ☐ Trades or services you are requesting
- ☐ Title, description and location of the project
- ☐ Where bid documents can be obtained
- ☐ Type of DBE category you are requesting
- ☐ Bid date and time

Pre-Bid/Pre-Proposal GFE: 2. Soliciting DBEs



- ☐ Document all solicitations including the names, dates and times you speak with DBE firms/recruitment sources
- ☐ Print out date stamped copies of websites you visit, and advertisements sent out, faxes received, etc.
- ☐ Keep a list of name, phone #s, emails, dates, comments and other information for each DBE firm, minority organizations, trade associations and ADOT staff you contacted

Pre-Bid/Pre-Proposal GFE: 2. Soliciting DBEs

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- ☐ Must provide sufficient time to allow DBEs to respond in a timely manner - at least 10-15 days
- ☐ Must take appropriate steps to follow-up with solicitations and document efforts



Pre-Bid/Pre-Proposal GFE:

3. Selecting Portions of Work for DBEs



- ❑ Break down contract into smaller economically feasible units to facilitate DBE participation
- ❑ Identify portions of the work that can be performed by subcontractors/DBEs
- ❑ Do so even if some of this work is normally performed with Prime's own forces

Pre-Bid/Pre-Proposal GFE:

4. Providing Access to Information



- ☐ Must provide interested DBEs with timely information about the plans, specifications and requirements of the subcontract
- ☐ As documentation, consider providing print screens of company's website where plans are available
- ☐ Copy of email sent to DBEs with instruction to access plans



Pre-Bid/Pre-Proposal GFE: 5. Negotiating with DBEs

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- ☐ Negotiate in good faith with DBEs taking price, firm capability and DBE goal into consideration
- ☐ Negotiate in good faith with DBEs that submit a responsible and competitive bid
- ☐ Not required to accept higher quotes from DBEs if price difference is excessive or unreasonable



Pre-Bid/Pre-Proposal GFE: 5. Negotiating with DBEs

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Business factors to determine whether a price is unreasonable may include:

- ☐ The Prime's prior experiences with a subcontractor
- ☐ Based on the number of quotes on an item
- ☐ The subcontractor's experience and capabilities for performing the work
- ☐ The complexity of the work
- ☐ The degree to which the work has time constraints



Pre-Bid/Pre-Proposal GFE: 5. Negotiating with DBEs

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- ❑ Burden of proof is on Prime to prove that price was unreasonable
- ❑ Failure to seriously consider a responsible low quote from a DBE could cause the bid to be rejected
- ❑ The contractor must 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.



Pre-Bid/Pre-Proposal GFE: 5. Negotiating with DBEs

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Evidence of good faith negotiations with DBEs include documenting:



- ☐ Names, addresses, and telephone numbers of all DBEs that were considered
- ☐ Description of information provided regarding plans and specifications for work to be subcontracted
- ☐ Quotes/prices provided for the same service by other subcontractors
- ☐ Why agreements could not be reached with DBEs that quoted or proposed to perform the work

Pre-Bid/Pre-Proposal GFE: 6. Not Rejecting DBEs

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Must not reject DBEs from bidding based on:

- ☐ Political or social affiliations
- ☐ Union vs. non-union employee status
- ☐ Membership in specific women, minority or other groups, organizations, or associations, affiliations



Pre-Bid/Pre-Proposal GFE: 6. Not Rejecting DBEs



- ☐ Must not reject DBE as unqualified without sound business reason
- ☐ Rejection can only be based on a thorough investigation of their capabilities, license and/or track record
- ☐ Prime must provide proof of reasons for rejection of each DBE bidder contacted or quoted

Pre-Bid/Pre-Proposal GFE: 7. Assistance to DBEs

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Provide documentation that Prime helped DBE with financial assistance such as:

- ☐ Bonding
- ☐ Insurance
- ☐ Lines of credit
- ☐ Payroll advances
- ☐ Joints checks



Pre-Bid/Pre-Proposal GFE: 8. Assistance to DBEs

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Provide documentation that prime helped DBEs to obtain:

- ☐ Necessary equipment
- ☐ Supplies
- ☐ Materials
- ☐ Related assistances or services

Pre-Bid/Pre-Proposal GFE: 9. Minority/Women Community Org




Effectively using services of available minority/women:

- ☐ Community organizations
- ☐ Contractors' groups
- ☐ Federal Assistance offices
- ☐ Other organizations that provide services for recruitment and placement of DBEs

Pre-Bid/Pre-Proposal GFE: GFE Forms



Sample Professional Services Form



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

Pre-Bid/Pre-Proposal GFE: GFE Forms



GFE Guide for Construction Projects

TABLE OF CONTENTS

SECTION 1.0 PURPOSE	3
SECTION 2.0 GOOD FAITH EFFORT COVER LETTER	4
2.01 Exhibit A	4
SECTION 3.0 DBE GOAL NOTICE	6
SECTION 4.0 DBE ASSURANCE CERTIFICATE	7
SECTION 5.0 GOOD FAITH EFFORTS	8
5.01 CONTACT BECO	9
5.02 SOLICITING	10
5.03 ADVERTISING	12
5.04 WRITTEN NOTICE TO DBEs	16
5.05 FOLLOW-UP WITH DBEs	18
5.06 IDENTIFY SUFFICIENT WORK FOR DBEs	19
5.07 NEGOTIATE IN GOOD FAITH	23
5.08 ASSISTANCE TO DBEs	25
5.09 ADDITIONAL GOOD FAITH EFFORTS	28
SECTION 6.0 APPENDIX A TO PART 26 – GUIDANCE CONCERNING GFEs	



Pre-Bid/Pre-Proposal GFE

Test your knowledge



A. What is the first step in providing GFE?

B. 3-5 days is sufficient time for DBEs to respond to a solicitation.

Evaluating GFE Standards

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- ❑ If all bidders submit GFE may be indication that goal was too high
- ❑ If other bidders meet the goal, questions will be raised whether low bidder met GFE standard
- ❑ ADOT must contact DBEs to see if they were contacted by the Prime.



Evaluating GFE Standards



- ☐ ADOT will review all documentation submitted by Prime
- ☐ Responding to all GFE factors does not necessary mean Prime demonstrated adequate GFE
- ☐ ADOT considers **quality, quantity and intensity** of the different kinds of efforts made by Prime
- ☐ Determination cannot be made using quantitative formulas – it is a judgment call based on factual information provided
- ☐ Circumstances vary widely and GFE determinations must fit each individual situation



Evaluating GFE Appeal



- ❑ If ADOT determines Prime GFE is inadequate, Prime will be given opportunity for appeal
 - Appeal must be in writing to the State Engineer no later than seven calendar days after BECO's GFE decision
 - Copies of the appeal to be sent to each bidder
 - Opportunity to meet with State Engineer



Evaluating GFE Appeal



- ☐ Any interested party may respond to the appeal no later than seven calendar days after the appeal
- ☐ A copy of this respond to be sent to all bidders
- ☐ State Engineer will notify all bidders in writing of the findings and decision
- ☐ Any party may protest the State Engineer's decision to the Transportation Board
- ☐ Appeal decision of the State Engineer is not administratively appealable to US DOT





- ❑ If Prime's GFE is rejected, ADOT will award contract to next responsive bidder that met the goal



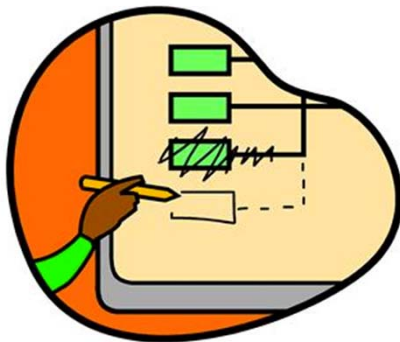
Post Award GFE DBE Termination/Substitution



Prime cannot terminate/substitute a DBE listed on the DBE Affidavit without good cause and without prior written consent from ADOT

Good cause include if the DBE:

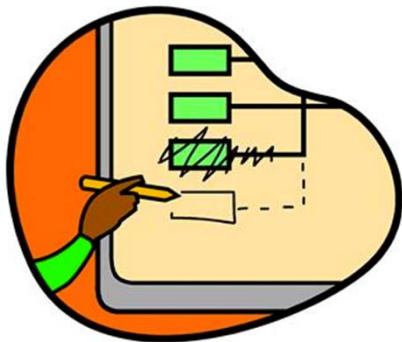
- ☐ Fails or refuses to execute a written contract-unless failure or refusal due to bad faith or discriminatory treatment
- ☐ Fail or refuse to perform work according to industry practice
- ☐ Becomes bankrupt, insolvent, or exhibits credit unworthiness
- ☐ Ineligible due to suspension or debarment



Post Award GFE DBE Termination/Substitution



- ☐ Voluntarily withdraws from the project and provides written notice of its withdrawal
- ☐ Failure to meet contractor's reasonable, nondiscriminatory bond requirements
- ☐ Is ineligible to receive DBE credit for the type of work required
- ☐ DBE is not a responsible contractor
- ☐ Owner dies or becomes disabled is unable to complete its work on the contract

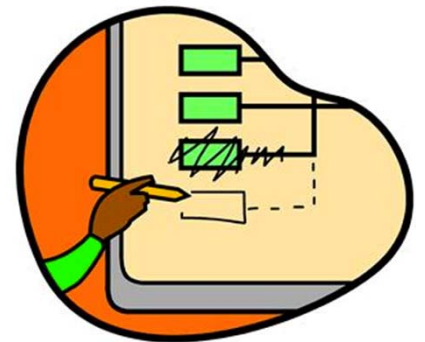


Post Award GFE: NEW DBE Termination/Substitution



Before requesting to terminate/substitute a DBE, the Prime must:

- ☐ Contact ADOT within 24 hours of first sign
- ☐ Give written notice to the DBE, with a copy to ADOT and provide reasons for the request
- ☐ DBE must be given, at the minimum, five days to respond

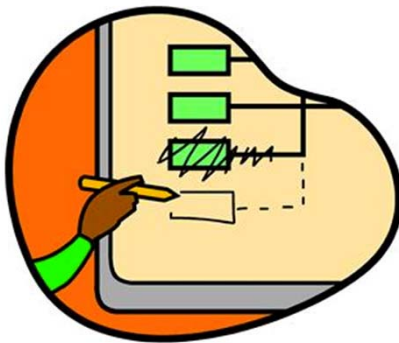


Post Award GFE DBE Termination/Substitution



When a request to terminate/substitute is approved by ADOT, Prime must:

- ☐ Make good faith efforts to find another DBE to substitute for the original DBE
- ☐ Submit GFE to ADOT within 7 calendar days from ADOT's approval if a DBE replacement is not identified



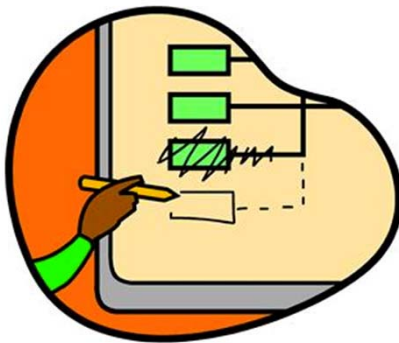
Post Award GFE DBE Termination/Substitution

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ADOT eliminates work:

- ☐ GFE is required
- ☐ ADOT will give consideration to when the change was made, the nature of the change, and other factors as determined by BECO.



Unacceptable GFE reasons:

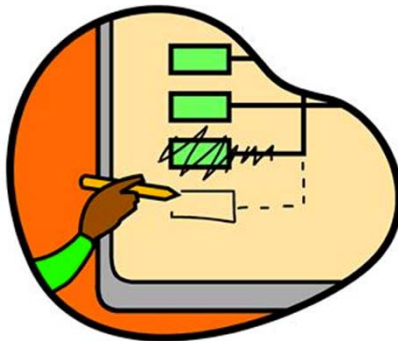
- ☐ Unable to match original price
- ☐ Ability of prime to self perform work

Post Award GFE DBE Termination/Substitution



Failure to obtain ADOT prior approval will lead to sanctions:

Liquidated Damages:



- ☐ The dollar amount of the wrongfully terminated/substituted DBE, plus 25 percent of the amount remaining to be paid to the DBE, if any.

Post Award GFE DBE Termination/Substitution



Construction/Professional Service DBE Termination/Substitution Form



ARIZONA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE (DBE) TERMINATION/SUBSTITUTION REQUEST



Fill out Form

Contract/TRACS No.: Mod: Task Order:
 Prime: AZ UTRACS Registration No.:
 DBE Firm: AZ UTRACS Registration No.:
 Requestor: Email: Phone Number:
 Type of request: ☐ Termination ☐ Substitution ☐ Reduction

1. Is this request due to an ADOT Change Order/Scope?

- ☐ Yes, explain below the Change Order/Scope impact on DBE participation.
- ☐ No, select below the fact(s) and the reason(s) for the request (see attached instructions). **DBE:**
- ☐ Fails or refuses to execute written contract
 - ☐ Fails or refuses to perform work in accordance with normal industry standards
 - ☐ Fails or refuses to meet prime contractor's reasonable, nondiscriminatory bond requirements
 - ☐ Becomes bankrupt, insolvent or exhibits credit unworthiness
 - ☐ Is ineligible to work because of suspension or debarment proceedings
 - ☐ Is not a responsible contractor
 - ☐ Voluntarily withdraws from the project and provides to the Department written notice of its withdrawal
 - ☐ Is ineligible to receive DBE credit for the time of work performed

Pre-Bid/Pre-Proposal GFE Best Practice Considerations



- ☐ Develop relationships with and have a list of DBEs ready to contact for different types of work
- ☐ Develop a mechanism to have DBEs register with or contact your firm for specific trades or types of work
- ☐ Ensure that DBEs are certified for the trade or type of work you need them to do
- ☐ Attend trainings like this one
- ☐ Setup a systematic process for documenting GFE

Pre-Bid/Pre-Proposal GFE

Test your knowledge



1. A prime's good faith effort should be done:
 - A. Only prior to bid
 - B. Never
 - C. Continually throughout the contract
 - D. Only when terminating DBE

2. GFE submittal with Termination/Substitution is within how many calendar days of approved termination:
 - A. 1 day
 - B. 10 days
 - C. 7 days
 - D. 5 days

Questions and Answers

