



U.S. Department of Transportation

**Departmental Office of Civil Rights (DOCR)
Federal Aviation Administration (FAA)
Federal Highway Administration (FHWA)
Federal Transit Administration (FTA)**

Good Faith Efforts (GFE)

**Disadvantaged Business Enterprise
(DBE) Program**

Good Faith Efforts (GFE) Training Topics

- GFE Basics
- Determining GFE: Pre-Award
- GFE: Meeting a DBE Goal
- GFE: When Goals are Not Met
- GFE: When Efforts are Not Sufficient
- GFE: Post-Award
- Additional Resources
- Q & A



GFE in the DBE Program

- Preserves the constitutionality of the DBE Program
- Critical component of oversight and compliance
- Protects the DBE program's integrity



Good Faith Efforts (GFEs)

All bidders must make good faith efforts to meet a contract goal. GFE are achieved when:

- The bidder commits to subcontracting with DBEs in a sufficient amount to meet the goal or
- In the event a bidder falls short of the goal with DBE subcontracting commitments, it submits documentation that demonstrates it made sufficient good faith effort to meet the goal

[49 CFR 26.53](#)



Timing of Submission

- Information must be submitted either:
 - At time of bid (Responsiveness)
 - 5 days after bid opening (Responsibility)
 - Extensions are not permitted
 - Must choose one method which should be in the program plan
- For a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid or with its response to a request for proposals



Pre-award Commitments

Bidders must include the following DBE information for contracts with DBE goals:

- Name and address of DBE
- Description of the work
- Dollar amount of participation
- Written documentation of the bidder's commitment to use each listed DBE
- Written confirmation from each listed DBE



Pre-award GFE Documentation

- If a bidder is unable to meet the contract goal with sufficient DBE subcontracting, it **MUST** provide the recipient with documentation supporting its GFEs
- The documentation of GFEs must include copies of each DBE and non-DBE subcontractor quotes submitted to the bidder when a non-DBE subcontractor was selected over a DBE for the same work item

[49 CFR 26.53](#)



Good Faith Efforts Basics

- Documented GFEs must demonstrate that the bidder “took all **necessary and reasonable steps to achieve a DBE goal... 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.”
- Fair and reasonable judgment considering the **quality, quantity, and intensity** of the different kind of efforts

[49 CFR Part 26 Appendix A](#)



Good Faith Effort Basics

- The efforts...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.(49 CFR Appendix A)
- No “extra points” for exceeding goals
- Do not rank bids based on amount of DBE participation



Good Faith Effort Basics (part 2)

- Proposed DBEs must be certified in NAICS code(s) of work to be performed
- Must ONLY award to bidder who made GFE to meet goal
- Goals are targets, NOT quotas; failure to meet goal not automatic disqualifier
- Must award to bidder if GFEs are determined sufficient, even if insufficient subcontracting



Good Faith Effort Actions

- The Recipient must evaluate the commitments and documentation submitted by all bidders
- **NO** quantitative formula or point system should be used
- Emphasize holistic nature of review



Good Faith Effort Actions (part 2)

Appendix A provides EXAMPLES of actions a recipient may consider as part of a contractor's Good Faith Effort to obtain DBE Participation

- This is NOT a mandatory checklist
- This is NOT an all-inclusive list
- Performing all these examples of actions does NOT automatically ensure a GFE has been made
- Would you hire a job applicant just because they answered all the questions?

[49 CFR Part 26 Appendix A](#)



Good Faith Effort Actions (part 3)

- Conducting research to identify small business contractors and suppliers
- Soliciting DBEs through all reasonable and available means
- Examples:
 - Phone calls
 - Emails
 - Advertisements (radio, tv, news/trade papers, website)
 - Pre-bid meetings
 - DBE networking events
- Ensure the solicitation to DBEs is early enough to allow time for a proper response!!



Good Faith Effort Actions (part 4)

- Did bidder break out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation?
- Did bidder consider items that it normally self-performs
- Was bidder flexible in delivery schedule (if possible)
- Did bidder provide meaningful follow up with DBEs after initial contact?



Good Faith Effort Actions (part 5)

- Bidder must negotiate with interested DBEs in good faith
 - Use good business judgment and document the negotiation
 - Evaluate a DBE's price and capabilities in consideration to achieving the contract's goal
 - Lowest price alone not a sufficient reason to reject DBE if price is reasonable
 - Regulations purposely refrain from identifying what percentage differential between DBE and non-DBE quotes is considered "unreasonable" (Most common question asked!)



Examples of Insufficient Good Faith Efforts

- Examples that could be considered **insufficient** Good Faith Efforts include:
 - Rejecting DBEs without having a sound reason based on the DBE's capability
 - Rejecting DBEs based on their:
 - Standing in the industry
 - Memberships in organizations or groups
 - Political and social affiliations
 - Soliciting DBEs that do not perform work relevant to the subcontracting opportunities (suggest *pro forma* efforts)



[49 CFR Part 26 Appendix A](#)

Examples of Insufficient Good Faith Efforts (part 2)

- Including firm(s) not DBE certified in your state prior to bid due date
- Including firm(s) not certified in the applicable program
- Including firm(s) not certified in the NAICS code of the work to be performed
- Promises to obtain DBE participation after contract award



GFE Administrative Reconsideration

Should the recipient determine bidder's GFEs are insufficient, the bidder must be given an opportunity for reconsideration

- Oral argument or written documentation, or both
- Decisionmaker must be one with knowledge of DBE Program regulations (GFE) and did not take part in the original determination
- A recipient must send the bidder a written determination
- The determination is not appealable to the USDOT

[49 CFR 26.53](#)



Good Faith Efforts: After Award

- No DBE removal (termination) without good cause
 - Good cause defined in rule
 - Recipient's prior written consent required
 - Violation makes prime ineligible for payment of the substitute firm's work
- After recipient approves a DBE removal
 - Prime must make GFE to obtain another DBE if necessary to meet goal (same or other work item)
 - GFE documentation to be provided on request

[49 CFR 26.53\(f\)](#)



Conclusion

- Good Faith Efforts required if there is a contract goal
- All bidders must submit GFE documentation
- If goal is met, no further GFE documents required
- Evaluate GFE in totality; Appendix A is not a checklist
- If DBE removed, GFE required to extent needed to meet contract goal
- Contact Operating Administration for technical assistance in GFE review process



Additional Resources

- [49 CFR Part 26, §26.53](#)
- [Appendix A](#)
- [DBE Program ACM Handbook](#)
- [USDOT Community of Practice Training Sessions](#)



Questions

