

## PROCEDURES FOR SUBMITTING GOOD FAITH EFFORTS INFORMATION ON DESIGN-BID-BUILD CONTRACTS

**In a design-bid-build procurement<sup>1</sup> with a contract goal, if a recipient chooses to require bidders/offerors to submit DBE information as a matter of responsibility, may a recipient require that only the apparent low bidder submit its DBE commitments and/or good faith efforts?**

- No. The DBE regulation directs all bidders (or offerors) to submit credible documentation of DBE commitments and/or good faith efforts either with their sealed bid, as a matter of responsiveness; or no later than five days after bid opening, as a matter of responsibility. See 49 CFR §26.53(b)(3)(i). The Department has determined that, at a minimum, recipients must review the performance of other bidders/offerors in meeting the DBE contract goal. See 49 CFR § 26, Appendix A, Section V. When recipients request that only the apparent low bidder submit its DBE commitments and good faith efforts, this prevents recipients from reviewing the performance of other bidders, and runs counter to the DBE program requirements.

**If the recipient determines that the apparent low bidder does not meet the DBE goal or does not document good faith efforts, may the recipient grant the second lowest bidder an additional five days to submit its DBE commitments and/or good faith efforts?**

- No. As explained above, 49 CFR § 26.53(b) directs all bidders (or offerors) to submit the required documentation of DBE commitments and/or good faith efforts either with their sealed bid, as a matter of responsiveness; or no later than five days after bid opening, as a matter of responsibility. The DBE program regulations do not authorize recipients to extend the five-day requirement for a bidder/offeror to submit its DBE commitments and/or good faith efforts.

**When a bidder/offeror provides the recipient with documents showing that it has obtained sufficient DBE participation to meet the contract goal, must the recipient require the bidder/offeror to also submit documents of its good faith efforts?**

- No. When a recipient verifies that a bidder/offeror has obtained sufficient DBE participation to meet the contract goal, it should not conduct further analysis of good faith efforts. A recipient determines whether a bidder/offeror can meet the DBE contract goal by assessing if the bid/offer contains the following:
  - (1) Documentation that the bidder/offeror has obtained sufficient DBE participation to meet the DBE contract goal; or
  - (2) Documentation that the bidder/offeror has made adequate good faith efforts to meet the DBE contract goal, although it did not obtain sufficient DBE participation to meet the goal.

Recipients are only permitted to award a contract with a DBE contract goal to a bidder/offeror that credibly demonstrates that it has either obtained sufficient DBE participation to meet the goal or has made adequate good faith efforts to meet the contract goal. The DBE regulations do not require that recipients conduct an additional analysis of the good faith efforts of a bidder/offeror that has documented sufficient DBE participation to meet the DBE contract goal.

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Parts 23 and 26.

**The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.**

<sup>1</sup> This guidance is not intended to address good faith efforts in design-build procurements.