



Good Faith Efforts Guidelines

DBE Goals are set by the Office of Civil Rights (OCR). These goals are included in the initial solicitation for bids, prime contractors will be considered non-responsive and will not win the contract if they do not achieve the DBE goal or submit sufficient evidence of Good Faith Efforts (GFE). While OCR encourages prime contractors to do their best to achieve set DBE goals, it is not always possible to do so, despite a prime's best efforts. Therefore, complete GFE applications also enable bids to be considered responsive.

GFE is an evaluation of the prime contractor's total effort to reach the DBE goal. The more effort made by a prime contractor upfront, the more likely they will receive enough competitive quotes to meet contract-specific goals or, if necessary, to receive a GFE waiver or goal modification. As each case is unique and will be evaluated independently, contractors should use this document as a guide, not strict rules to produce their GFE requests. The more evidence the contractor can produce demonstrating their GFE, the better their chances are for approval.

In accordance with the guidelines set in [CFR 49, part 26 subpart C](#), prime contractors must submit the following to be compliant with GFE requirements.

1. **Cover letter:** Include any relevant information explaining the circumstances surrounding the need for a goal modification.
2. **DBE Commitment Certification and Utilization Form 734-2785.** *If prime contractor is unable to find any DBEs willing to commit, this form will not be applicable and additional documentation will be required to explain the lack of committal.*
3. **DOCUMENTATION:** Document **all** efforts made toward achieving the DBE goal on the contract. *Keep in mind that blank solicitations and generic requests do not demonstrate good faith efforts.*

The following are examples of possible documentation:

- Solicitation letter to DBEs
 - Specific to the job and scope of work needed (*according to federal rules, include willingness to accept quotes for work the Prime was planning to do themselves*).
 - Include response due date and preferred communication method.
- Follow-up log and any other attempts to reach out to nonresponsive DBEs.
- Copies of all communication and corresponded with DBEs
- Copies of advertisements placed for DBE subcontractors.
- List of bids received: Both from DBEs and Non-DBEs.
- List of rejected DBE bids and reason for the rejection.

The above listed documents should be submitted with the prime contractor's bid packet. The GFE submission will be evaluated on the following criteria:

1. Offer of Work. The prime contractor must demonstrate they:
 - a. Requested bids for a sufficient amount of work to meet the DBE goal.
 - b. Offered work in an economically feasible way.
 - c. Provided sufficient detail about the project in the solicitation for bids.

- d. Offered sufficient work variety, including work the contractor may complete with their own work force.
 - e. Notified all relevant DBE firms in close geographic proximity to the project.
 - f. If applicable, negotiated with subcontractors to assume part of the responsibility to meet the DBE goal through DBE participation via 2nd and 3rd subcontractors.
2. Time Notice. The prime contractor must demonstrate that they:
 - a. Sent written solicitation notice to certified DBE firms within at least 3 days prior to the bid opening date.
 - b. The solicitation included
 - i. Name and location of the project
 - ii. Bid date
 - iii. Scope of work requested
 - iv. Location where DBE can review plans and specifications
 - v. Date and time to submit quote
 - vi. Contract name for technical assistance
 - vii. Any special requirements
 3. Reasonable Capital Assistance and Accommodations.
 - a. If requested, the prime made efforts to assist interested DBEs in obtaining bonding, credit, insurance, equipment, supplies, materials, etc.
 - b. If requested, the prime made efforts to assist interested DBEs with technical assistance?
 4. Contractor Follow-Up. The prime contractor must demonstrate that they:
 - a. Maintained a follow up log from the initial solicitation including
 - i. Type of contact
 - ii. Name on contact person
 - iii. Name of DBE firm
 - iv. Date and time
 - v. Response received
 - vi. Reason for DBE not bidding on project (if applicable)
 - b. Supply reason for rejecting bids received by DBEs (if applicable)
 5. DBE Program Outreach and Participation
 6. Additional considerations:
 - a. The GFE application is completely filled out, signed and submitted on time (by 9am before bid opening).
 - b. The prime contractor's documentation reflects a clear and realistic plan for achieving the DBE goal.
 - c. The prime contractor's past performance in meeting DBE goals.
 - d. The performance of other prime contractors in meeting the DBE goal. *If other prime contractors consistently meet the DBE goal, but the prime in question fails to meet it, questions regarding good faith efforts may be reasonably raised.*

The following are not acceptable reasons for failing to meet DBE goals and do not adequately demonstrate good faith efforts:

- The prime contractor desires to perform work of a contract within its own organization.
- Rejecting a DBE bidder due to: their standing in the industry, membership in specific groups, organizations, or associates and political or social affiliations (of example: union vs non-union employees).

- The DBE is not the lowest bidder. While, prime contractors may reject a DBE bid if it is excessively or unreasonably higher than non-DBE bids, a slightly higher bid should be accommodated to meet the goal.

Awarded Contracts

If the bid is considered responsive and the project is awarded to the prime contractor, the following additional steps are required to complete the GFE commitment.

1. **Form 2: Committed DBE Breakdown and Certification Form 734-2531.** **Must be the same or more than the value indicated on Form 1.*
 2. Name of DBEs to be awarded work
 3. Detailed description of the bid items
 - Bid item number
 - Description
 - Amounts
 - Dollar amounts to be subcontracted
- Due: within 5 calendar days of award notification.

Rejected Bids

ODOT will notify a bidder within 15 days of bid opening if the submitted bid is non-responsive, including reasons for the determination. In the case a bid is determined non-responsive, the contractor has the right to the following process according to [CFR 26.53](#):

- Provide written documentation or argument to a review committee within 3 working days of the receipt of notification.
- The bidder may receive an in person meeting with the review committee to discuss the issue.
- The review committee will make a determination regarding the appeal within 3 working days of reviewing the provided evidence.
- The bidder will receive a decision within 4 working days.

The results to reconsideration cannot be appealed to USDOT.