

OCTA's GOOD FAITH EFFORTS TOOLKIT

Table of Contents

- **When are Good Faith Effort (GFE) Documents Required**
- **GFE Submission Timeline**
- **Evaluating Good Faith Efforts**
- **Elements of OCTA's GFE Review**
 - **Items of Work Made Available**
 - **Solicitation Efforts**
 - **Rejected DBE Documentation**
 - **Publication Efforts**
 - **Agencies, Organizations, or Groups Contacted to Provide Assistance**
 - **Efforts to Provide Information About the Plans, Specifications, and Contract Requirements;**
 - **Assistance with Lines of Credit, Insurance, and/or other Services;**
 - **Additional Data and Other Bidder/Proposer Commitments**
- **Final Determination**



When Are Good Faith Effort (GFE) Documents Required?

When the project is federally-funded and a bidder/proposer has not committed to meet or exceed the DBE goal they must complete and submit the form entitled “DBE Information-Good Faith Efforts” with applicable support documentation to demonstrate Good Faith Efforts.

IFB No. _____ Bid Opening Date _____

DBE INFORMATION - GOOD FAITH EFFORTS

The Orange County Transportation Authority (Authority) established a Disadvantaged Business Enterprise (DBE) goal of _____% for this contract. The information provided herein shows that a good faith effort was made by _____ (Bidder).

Bidder shall submit the following information to document adequate good faith efforts to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority's bid due date, or as otherwise specified in the solicitation. Bidder shall submit the following information even if the "DBE Participation Commitment Form" indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if Authority determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following good faith efforts items (A through H) shall be minimally performed prior to bid submission. Bidder to complete the following items in sufficient detail to effectively demonstrate that good faith efforts were undertaken to meet the established DBE goal:

1. Items of Work the Bidder Made Available to DBE Firms: a description of work items and approximate dollar amounts made available to DBE firms by the bidder, value of work items as a percentage of total contract work, breakdown of bid items or larger scopes of contract work (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the bidder's responsibility to demonstrate that sufficient work was made available to facilitate DBE participation as follows (Provide documents that sufficiently evidence the efforts detailed below):

Description of Work Item	Bidder Normally Performs (%)	Unbundled from Larger Scope (Y/N) If Yes, List Scope and/or Bid Item #s	Amount (\$)	Percentage of Contract

GFE Submission Timeline

GFE documentation required no later than 4:00 p.m. on the 2nd business day after the bid/proposal due date.

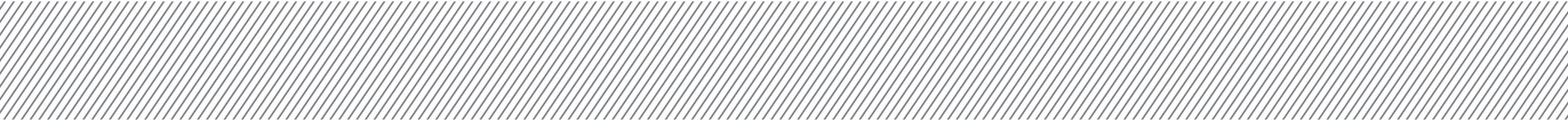
Evaluating Good Faith Efforts

- Bidder/proposer must demonstrate REAL and SUBSTANTIVE Efforts.
- Bidder/proposer must have taken all necessary and reasonable steps to meet the DBE contract goal and their documentation should demonstrate they were actively and aggressively trying to meet the DBE goal.
- OCTA will consider the quality, quantity, and intensity of the different kinds of efforts.
- When the DBE commitment is significantly below the DBE goal, a comprehensive good faith effort review is performed.

Evaluating Good Faith Efforts

Title 49, Code of Federal Regulations (CFR) Part 26, specifically, Appendix A provides guidance in determining whether a bidder/proposer has made adequate good faith efforts.

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-regulations>



Elements of OCTA's GFE Review

Items of Work Made Available

- A minimum of 30 percent of the contract must be performed by the Prime Contractor.
- Provide a description of the work and the value of the scope items made available to DBE firms. Identify the value of the scope items as a percentage of total contract work.
- Percentage of identified scopes of work should match the contract requirements/value of bid/scope areas.
- Identify larger scopes (including those items normally performed by the bidder/proposer with its own forces) that were broken out into economically feasible units to facilitate DBE participation.

Items of Work Made Available Cont.

- Percentage of work made available should exceed the DBE contract goal.
- Scopes of work identified as made available should match what was listed on the bidder's Invitation to Bid, Ad and solicitation e-mails.
- Items of work made available that are self-performed by Prime may be an indication that the scope was not actually made available to DBE firms.
- Rejected bids from DBE firms in scopes identified made available to DBE firms may be an indication that the scope was not actually made available to DBE firms.

Items of Work Made Available Example

Items of Work	Bidder performs work	Bid Amount	% of Total Bid
Consultant Non-Engineering C8700	No	\$2,750.00	0.4%
Traffic Engineer C8703	No	\$7,300.00	1.0%
Engineering C8710	No	\$25,474.00	3.5%
Consultant, Environmental C8713	No	\$47,612.00	7.0%
Total DBE commitment: 2.00%			
DBE Goal: 7.0%			
Total work made available: 11.9% > 7.0%			
Like to see more work made available by proposer!			

Solicitation Effort Documentation

- Provide documentation to demonstrate DBE firms were provided information about the contract (location of project, bid date, items of work made available and prime contact information).
 - Provide evidence firms were solicited through all reasonable means, e.g. attendance at pre-bid meetings, phone calls and written notices.
 - Provide evidence that you contacted DBEs in OCTA's market area that are certified in the work items identified as made available.
 - Utilize the California Unified Certification Program DBE Database (CUCP) for firms available in identified scope items and provide evidence that a reasonable % of available DBEs were contacted in an effort to gain DBE participation.
- e.g. if only 30 DBE firms are available it would be reasonable to contact 100% of the listed firms. If 3000 DBE firms are available, it would be reasonable to contact 50% of the listed firms.

Solicitation Effort Documentation Cont.

- Bidders/Proposers to provide type of solicitation, date, time and who was spoken to.
- Provide evidence of communications, inclusive of copies of solicitations, telephone records/logs, who was spoken to, fax confirmations, email communications, etc.
- Initial contact should allow sufficient time for DBEs to respond (minimum 14 days).
- Bidders/Proposers must follow-up with initial solicitations to determine with certainty whether DBEs were interested.
 - Include efforts to identify correct number or an e-mail if number was out of service or e-mail was returned.
 - Must solicit and follow up with DBE firms in a timely manner that allows sufficient reasonable time to respond.

Rejected DBE Bid Documentation

- MUST include quote(s) from rejected DBE firm(s), the quote from the firm selected for the work AND an explanation of why the selected firm was chosen over the rejected DBE.
- Provide documentation that evidences efforts made to communicate, clarify and/or bring the DBEs on the team.
- Provide documentation that evidences negotiating with DBEs in Good Faith.
- **Include copies of ALL rejected quotes. OCTA will validate this by contacting DBEs proposed by other bidders to verify who received bids and to confirm accuracy of rejected DBE listing provided.**

Rejected DBE Bid Documentation Cont.

- If the reason for rejection states “unqualified”, support must be included.
- Cost alone is not a sufficient reason to not utilize a DBE firm (within reason). If the reason for rejection was “price“ the following must be considered:
 - Was the cost differential 10% or less? If so, it could be reasonable to conclude the bidder should have given cognizance to the goal and opted to go with the DBE.
 - Were the quotes an apples to apples comparison? If the bid items were not the same the values would likely not be equal.
 - Example: If the DBE was offered bid items 1-5 and Non-DBE firm was offered bid items 1-20, they have an ability to offer a lower rate for items 1-5 as they can absorb the cost in other areas. These are not “like” bids.

Publication Efforts

- Provide the names and dates of each publication in which a request for DBE participation for this project was placed by the bidder.
 - Attach copies of advertisements or proof of publications.
- Publications must be placed at a minimum **14 calendar days** before the OCTA's bid/proposal due date.
- Publications need to be placed in a media that is accessible to DBEs.
- Publications should not be placed in media that requires a fee to view or receive.
- Publications should show DBE firms were provided information about the contract (location of project, contract number, bid date, scope of work made available and contact information).
 - Scope of work made available should match and include all scopes that were identified as made available to DBE firms.
- If the bid/proposal due date is extended, re-advertise new bid/proposal due date.

Agencies, Organizations, or Groups Contacted to Provide Assistance

- Provide the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms.
 - Attach copies of requests to agencies, responses received, and efforts made in response.
- If assistance was provided by an agency, organization and/or group, provide documentation evidencing how it was used and the follow up for the assistance provided.
- Provide evidence of lists or databases used to find DBE firms and evidence the DBE firms were contacted.

Examples of agencies, organizations or groups

District 12, District Local Assistance Engineer: Tifini Tran at (949) 756-7805 or at Tifini.Tran@dot.ca.gov

District Small Business Liaisons (DSBL): Brian G. Walsh, DSBL #12 (949) 724-2332, Brian.G.Walsh@dot.ca.gov.

California Construction Contracting Program (CCCP): Peg Bergmann, Project Director, at (916) 445-3512 or at peg_bergmann@dot.ca.gov.

SCORE Orange County

List of California Chambers by County: <http://advocacy.calchamber.com/resources/local-chambers/>

Construction Management Association of America (So Cal Chapter): www.cmaasc.org

California Unified Certification Program DBE Database (CUCP) <https://dot.ca.gov/programs/civil-rights/dbe-search>

Provide Information About the Plans, Specifications, and Contract Requirements

- Provide evidence of efforts for any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs.
- Include links and/or instructions to plans, specification and contract documents in Advertisements and Solicitations.
- Provide evidence of efforts made to assist interested DBEs in obtaining necessary materials, or related assistance or services. Efforts should exclude supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate(s).
- Provide evidence of assistance (emails, phone logs, faxes) and results.

Assistance with Lines of Credit, Insurance, and/or other Services

- Provide evidence of efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance.
- Document availability of assistance through advertisements and solicitations.
- Developed innovative measures to assist DBEs with bonding, lines of credit or insurance.
- Provide evidence of communications (emails, phone logs, faxes) if assistance was provided.
 - Included evidence of steps taken to provide assistance and results.

Additional Data and Other Bidder/Proposer Commitments

- In determining whether a bidder/proposer made adequate good faith efforts, OCTA must take into consideration the performance of other bidders/proposers in meeting the DBE contract goal.
- The DBE participation commitment of the other bidders/proposers is the primary consideration for this element of the evaluation. When the apparent low bidder/proposer fails to meet the contract goal, but the others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent low bidder/proposer could have met the goal.

Example:

- 1st bidder: 3% commitment
- 2nd bidder: 6% commitment
- 3rd bidder: 10% commitment
- In the above scenario the average of the bidders is 6.3%, as the 1st bidder came in below the average.

Final Determination

- GFE reviews are based upon qualitative analysis of the documentation provided by the bidder/proposer within each of the evaluation elements.
- A checklist or point system will not be used.