

Helpful Tips for Evaluating
Good Faith Efforts of Bidders &
New GFE Process

DRAFT

When Does GFE Apply

- 49 CFR Part 26 States: “When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it.”

MDOT's GFE Process



- Pre-Award – MDOT Form 2653 & 2653D
 - Must be submitted by all bidders within 5 calendar days of the bid letting, regardless of bid status.
- Post-Award – MDOT Form 2653
 - Must be submitted within seven calendar days of the prime vendor being made aware of their inability to meet the DBE participation goal.

GFE Submissions

- All bidders must:

- Provide the overall DBE percentage they have attained at the time of bid within the DBE Goal folder of the Project Bids file on all projects with a DBE goal designation.

- Within 5 calendar days of the bid letting all bidders must:

- Submit the Contractor GFE form (2653 & 2653D) to MDOT-DBESheets@Michigan.gov
- Comply with the requirements shown on MDOT form 2653.
- Submit additional GFE documentation consistent with the guidelines of 49CFR Part 26, Appendix A of the regulations, if they were not successful in obtaining the contract goal, for evaluation by MDOT.

GFE Submissions

- Contractors unable to obtain a signed Detail Page (MDOT Form 2653D) from the DBE within five calendar days of the bid letting, may submit a completed Form 2653 and a signed quote containing the following:
 - Quote contains a statement confirming the [Name of Bidder] accepts the terms of the quote and the [Name of DBE] is committed to performing the work and/or supplying the materials specified herein.
 - Expiration date to ensure the quote is valid up to the time work is performed.
 - DBE quote and bidders' commitment must match, no variance of quantities or pricing is allowed.
 - DBE representative's signature
 - Project Number and Location
 - Date of quote

GFE Submissions

- A bidder who fails to meet the submittal requirements for DBE participation will be deemed ineligible for award of the contract.
- Contracts will not be awarded without completed Form(s) 2653 & 2653D with all appropriate signatures and, if necessary, trucking and supplier attachments.
- The prime's commitment must be a direct reflection of the quote (with no variation).

Efforts to Obtain DBE Participation



- Efforts shall:
 - Be intense, aggressive, and sincere for the specific project and shall go beyond simple paperwork exercises.
 - shall include written communication, personal contact, follow-up, and, where appropriate, earnest negotiation with DBE's.
 - Timely and adequate.

Efforts to Obtain DBE Participation



- Efforts should be those that one could reasonably expect a bidder to take if the bidder were ***actively and aggressively trying to meet the goal.***
- MDOT must consider the ***quality, quantity, and intensity*** of the different kinds of efforts.
- Type of actions MDOT will consider as part of the contractors GFE to meet the goal, can be found in *Appendix A of 49 CFR Part 26.*

Adequate Good Faith Efforts?



**Quality,
Quantity,
Intensity of
Efforts**

**Efforts of
other bidders**

- ◆ *Solicitations*
- ◆ *Break Out Items*
- ◆ *Amount of work made available*
- ◆ *DBE Commitment*
- ◆ *# and \$ of DBE Bids*
- ◆ *Bonding, Insurance, Materials, and Supplies Assistance*
- ◆ *Plans, Specs., and Requirements Available*
- ◆ *Other Factors*

**Actively &
Aggressively trying to meet goal?**

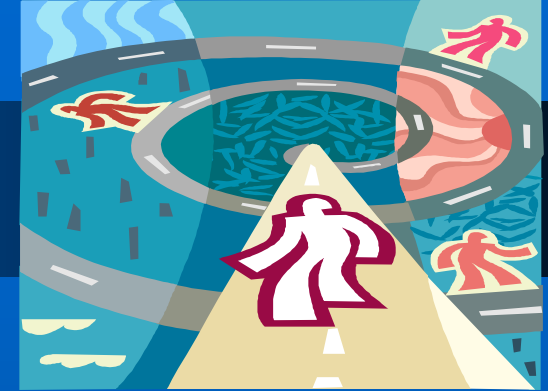
Adequate Good Faith Efforts



- Determining sufficiency of a bidder's good faith efforts is a judgment call; meeting quantitative formulas is not required, nor possible.

Meeting a quantitative formula for adequate good faith efforts would not meet the requirements of Appendix A. The drafters of the regulations state, "Certainly a one-size-fits-all checklist is neither desirable *nor possible*. What constitutes a showing of adequate good faith efforts in a particular procurement is an intrinsically fact-specific judgment that recipients must make. Circumstances of procurements vary widely, and GFE determinations must fit each individual situation as closely as possible." (Emphasis added.) See 64 Fed. Reg. 5114 (1999).

Efforts of Other Bidders



- Recipients may take into account the performance of other bidders
 - DBE commitment
 - All the other GFE factors: solicitations, assistance offered, amount of DBE bids received for a variety of work items, etc.
- This provides a yardstick to measure GFES.

Information in a Solicitation



- Bidders contact information – phone, fax, and email address
- Project number
- Types/description of work made available
- Bid date and time

Solicitations



- Written solicitations should be sent to all certified DBEs listed to do work made available by bidder
- Written solicitations and ads should include at least the minimum information to solicit a bid

Solicitations



- Clearly identify which work categories you are soliciting DBEs.
- Show that you considered subcontracting work that COULD be self-performed.
- Request Subcontractors solicit and use DBEs.

Solicitations



- If a DBE submits a bid, it should be listed:
 - On DBE commitment sheet or
 - On list of rejected DBEs
- If a solicited DBE stated it will submit a bid, follow-up the DBE to check if they submitted it.

Solicitations



- Using the plan holders list is not a reasonable GFE solicitation list
- Adequate time must be allowed for DBE to respond
- Bidders must document all solicitations

Solicitations



Check the DBE responses to solicitations

Are enough DBEs going to submit bids to meet the goal?

No

What additional efforts were exercised by the bidder?

The greater the short fall from the goal, the more additional efforts should be exerted.

Basic Verifications



- Verify the listed DBEs are certified/prequalified for the work listed
- Verify DBE quotes are complete
- Ensure adequate description of DBE work
 - Non-bid items are described in sufficient detail
 - Partial work items are described in sufficient detail

Rejected DBEs



- If a DBE is allegedly unqualified, it must be for sufficient reason, such as lack of license, or poor work documented by a contracting agency.
- You cannot reject a DBE bid solely because of price, as long as the price is reasonable.
- Cannot reject a DBE because the Prime or other non-DBE contractors want to perform the work themselves.

GFE Determination

- In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts consistent with Appendix A
- At a minimum, MDOT must:
 - review the performance of other bidders in meeting the contract goal
 - review all claims of the prime that the DBE costs are excessive when compared to the prime's costs to self-perform the quoted work
 - require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder

GFE Determination (Con't)

- At a minimum, MDOT must:
 - review whether DBE prices were substantially higher than the non-DBEs quote for the same items of work
 - contact the DBE's listed on a contractor's solicitation to inquire as to whether they were contacted by the prime contractor
 - Determine if enough work was made available to meet the goal
 - Determine if the bidder solicited all available DBEs for the items of work

Post-Award GFE

- Post-award good faith efforts can be defined as efforts taken by the prime vendor to meet the DBE goal after the contract has been awarded
- Primes are required to:
 - substitute a DBE that is unable to perform with another DBE to perform at least the same amount of work, to the extent needed to meet the contract goal
 - If the substitute subcontractor is a DBE, they must be included on the DBE Participation form (MDOT Form 2653) and submitted to the Project Engineer and Contract Services Division for approval prior to starting work.

Post-Award GFE (Con't)

- Primes are required to:
 - unless consent to replace a DBE is granted by MDOT, the prime contractor shall not be entitled to any payment for work performed or materials supplied.
 - submit a Post-Award Good Faith Effort (MDOT Form 2653) and all supporting documents to the Office of Business Development, if the goal will not be met.
 - submit post-award GFE's within 7 calendar days of the prime vendor being made aware of their inability to meet the DBE participation goal

GFE Committee Decisions

- The committee will consider the sufficiency of the evidence and documentation supporting the GFE and make a determination.
- GFEs are either determined sufficient or insufficient.
- MDOT can no longer contact the prime vendor other than to clarify possible errors.
- MDOT can no longer hold meetings with the prime vendor, we can only evaluate the GFE based on their written submission
- Vendors whose GFE's are found insufficient may have their GFE reconsidered

GFE Reconsideration Decisions

- The GFE Reconsideration Committee will not consider information or documentation that was not included in the original GFE submittal
- Written reconsideration requests must be submitted within five calendar days of being notified of the GFE Committee's decision
- The requestor will be notified of the date and time of the meeting at which the reconsideration will be held.

GFE Reconsideration Decisions

- The requestor is required to be present at the meeting in person, virtually or via phone.
- Decisions will be provided in writing.
- Decisions of the GFE Reconsideration Committee are administratively final.

GFE Committee Members

- The composition of the GFE Committee (each member will have an alternate) is as follows:
 - DBE Administrator, OBD (Chair)
 - Two DBE Program Civil Rights Staff
 - Contract Services Division Administrator or Designee
 - Construction Field Services Division Administrator or Designee
 - Two Region Engineers or Designees

GFE Reconsideration Committee

- The composition of the GFE Reconsideration Committee (each member will have an alternate) is as follows:
 - MDOT Chief Culture Equity and Inclusion Officer (Chair)
 - MDOT Chief Operations Officer
 - MDOT Chief Administrative Officer
 - Bureau of Finance and Administration Director

Contractor GFE Form Updates

[Clear Form](#)

Michigan Department
of Transportation
2653 (10/2023)

CONTRACTOR GOOD FAITH EFFORTS

Page 1 of 5

SECTION A. CONTRACTOR INFORMATION		
CONTRACTOR		VENDOR ID
CONTACT NAME	E-MAIL ADDRESS	PHONE NUMBER

SECTION B. PROJECT INFORMATION		
LETTING DATE	LETTING ITEM NUMBER	CONTRACT ID

Contract Bid Amount: _____
 Contract Goal: _____ %
 Contractor Good Faith Efforts: _____ % \$0.00

SECTION C: DBE COMMITMENTS

List the DBEs for the project. Include their MDOT Vendor Number, Work code(s) being performed, and the DBE credit of the proposed subcontract or purchase order. If the firm is Supplying as a Regular Dealer, list the 60% amount below.

DBE NAME and ADDRESS	MDOT VENDOR NUMBER	MDOT WORK CODE(S) FOR THIS PROJECT	NAICS CODE(S)	DOLLAR AMOUNT USED FOR DBE CREDIT
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
TOTAL DBE COMMITMENTS				\$0.00

By signing this form, the Contractor acknowledges that if they are awarded the contract, they will use the DBEs listed in Section C.

AUTHORIZED PRIME SIGNATURE	DATE
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- A completed [Form 2653D](#) must also be submitted for each listed DBE vendor.
- If you are using a DBE supplier, [MDOT Form 0193](#) must also be submitted.
- If you are using a DBE Trucker, [MDOT Form 4101](#) must also be submitted.
- Forms 2653, 2653D, and applicable attachments are to be submitted to MDOT-DBESheets@Michigan.gov.

IF YOU HAVE NOT MET THE ADVERTISED CONTRACT GOAL, COMPLETE SECTION D - H.

SECTION G. DBEs PROVIDING QUOTES THAT WERE NOT SELECTED (Documents must be attached)	
NAME	QUOTED AMOUNT
WORK CLASSIFICATION(S)	
MEANS OF SOLICITING (ex. E-mail, Fax, Phone, etc.)	DATE(S) OF QUOTE
REASON(S) NOT SELECTED - DOCUMENTS MUST BE ATTACHED	
<input type="checkbox"/> Used another DBE <input type="checkbox"/> DBE could not meet time frame <input type="checkbox"/> Quote unacceptable (Explanation): _____	
NAME	QUOTED AMOUNT
WORK CLASSIFICATION(S)	
MEANS OF SOLICITING (ex. E-mail, Fax, Phone, etc.)	DATE(S) OF QUOTE
REASON(S) NOT SELECTED - DOCUMENTS MUST BE ATTACHED	
<input type="checkbox"/> Used another DBE <input type="checkbox"/> DBE could not meet time frame <input type="checkbox"/> Quote unacceptable (Explanation): _____	
NAME	QUOTED AMOUNT
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REASON(S) NOT SELECTED - DOCUMENTS MUST BE ATTACHED	
<input type="checkbox"/> Used another DBE <input type="checkbox"/> DBE could not meet time frame <input type="checkbox"/> Quote unacceptable (Explanation): _____	

SECTION H. GOOD FAITH EFFORT DOCUMENTATION

Please identify each item that is attached with your Good Faith Effort for this contract:

- _____ Documentations of solicitations to DBEs.
- _____ Documentations that subcontractors were asked to attempt to provide DBE participation on the project. (ex. In the text of the Request for Quotes, via Advertisement or E-mail.)
- _____ Copies of quotes for work to be subcontracted to non-DBEs.
- _____ Copies of quotes from DBEs that were not selected.
- _____ Apples-to-apples spreadsheet.
- _____ Documentation showing the Michigan Unified Certification Program (MUCP) website was used to identify DBEs who work in the county where the project is located.
- _____ Additional information that supports the contractor's Good Faith Efforts.

GOOD FAITH EFFORTS
COMMITMENT CONFIRMATION FOR DBE SUBCONTRACTORS

[Clear Form](#)

DBE FIRM NAME		LETTING DATE	LETTING ITEM #
		CONTRACT ID	
DBE FIRM CONTACT PERSON		PRIME CONTRACTOR	
DBE FIRM ADDRESS	CITY	STATE	ZIP CODE
DBE FIRM PHONE NUMBER	E-MAIL ADDRESS		

WORK BEING PERFORMED IS (Check all that apply): Complete Partial Furnish and Install Labor Only

- For DBE Trucking Credit (RJ) – [MDOT Form 4101](#)** (Trucking Credit Worksheet) must be submitted.
- For DBE Supply Credit (ex. TB, TX, TI) – [MDOT Form 0193](#)** (Supplier Participation Affidavit) must be submitted.

MDOT WORK CODE(S)	NAICS CODE(S)	DETAILED DESCRIPTION OF WORK BEING PERFORMED (If Applicable – Must Include Location(s) of Work Being Performed, Material, Type/Grade/Class, Quantities and Price)	DOLLAR AMOUNT FOR DBE CREDIT \$
<i>(Add Additional Pages If Necessary)</i>			

This is not binding until signed by all parties and the contract is awarded by Contract Services Division. Rubber stamped signatures will not be accepted.

DBE AUTHORIZED SIGNATURE	TITLE	DATE

** Additional forms for DBE Trucking ([Form 4101](#)) and Supply ([Form 0193](#)) must be submitted by the Prime Contractor to Contract Services Division in accordance with MDOT's DBE Program Procedures.

Form 2653 Instructions (Con't)

What type of work did the bidder make available to DBE Firms? List the specific work classes on this particular project (e.g. Cb, Ea, I, etc.)

What types of work did the bidder not make available to DBEs? List specific work classes on this particular project that were not made available for DBE quotes (e.g. Cb, Ea, I, etc.)

How were DBEs notified? Check all the ways that DBEs were notified that you were requesting quotes

How were plans and specifications specific to the items of work made available? Check all the ways that plans and specifications for this specific project were made available to DBE subcontractors

SECTION F: WORK TO BE SUBCONTRACTED TO NON-DBES

CONTRACTOR NAME: List the names of the non-DBE subcontractors who will be working on the project

WORK CLASS(es) QUOTES: List the specific work classes that will be performed by the non-DBE subcontractors on this project

QUOTED DOLLARS: List the total of the quotes of the non-DBE subcontractors on this project

CALCULATED TOTAL: This will auto-calculate the totals from the QUOTED DOLLARS column and populate the field TOTAL WORK TO BE SUBCONTRACTED TO NON-DBES in Section D

SECTION G: DBES PROVIDING QUOTES THAT WERE NOT SELECTED

There are two full pages to list out each DBE that provided a quote, but was not selected. If you need additional space, you may add the information on an additional page.

NAME: List the name of the DBE company that provided a quote, but was not selected.

QUOTED AMOUNT: List the quoted amount

WORK CLASSIFICATIONS: List the work classifications for which the DBE was providing a quote

MEANS OF SOLICITING: List each way that the DBE was contacted to provide a quote on the project

DATE(S) OF QUOTE: List the date that the DBE provided their quote

REASON(S) NOT SELECTED: Identify the reason that you did not select the DBE for the work they quoted

SECTION H: GOOD FAITH EFFORTS DOCUMENTATION

Identify each item that is being included with your submittal

- Submit Form 2653, Sections A-H, with a completed Form 2653D for each DBE subcontractor listed in Section C, to MDOT-DBEsheets@michigan.gov
- If you are using a DBE Trucker, also include Form 4101 for each DBE Trucker, if applicable
- If you are using a DBE Supplier, also include Form 0193 for each DBE Supplier, if applicable



Questions?