



August 31, 2016

via fax (916) 227-6282

State of California
 Department of Transportation
 1727 30th Street, Bidder Exchange, MS 43
 Sacramento, CA 95816

Attn: Jill Sewell, Office Chief, Office Engineer

Re: Contract No. 11-416804
 Route 8/153 Separation

Ms. Sewell:

This letter serves as a formal protest of the bid and DBE Commitment submitted by Palm Engineering Construction Company, Inc. (Palm) on the above referenced contract.

A Public Works Contractor is defined as someone that works or bids on a Public Works project (attachment #1). A Public Works Contractor has 4 Responsibilities:

- Register as a Public Works Contractor
- Pay Prevailing Wages
- Follow apprenticeship requirements
- Maintain and submit certified payroll records

Palm listed J. McBride Trucking Services, Inc. (McBride) on their DBE Commitment Form. McBride did not have an active DIR Registration number on the day of the bid opening and therefore is ineligible to bid on this contract (attachment #2, item #7).

Palm failed to provide a written quote from McBride & A.B. Hashmi, Inc. (Hashmi) as required by Section 2-1.12B(2) 'DBE Commitment Submittal' of the Revised Standard Specifications (attachment #3). We have also attached a letter from Cal Trans confirming that this is a requirement (attachment #4).

Cal Trans has determined that Palm cannot use Ace Fence (Ace) for bid item #73 (\$37,800) as credit toward their DBE goal (see attachment #5).

The Good Faith Effort submitted by Palm does not meet Cal Trans's requirements. Palm failed to fill out pages 3-5 of the DBE Good Faith Efforts Documentation (see attachment #6). In particular, as required by item 2 on page 4, Palm failed to follow-up on solicitations. This is also required by CFR, Part 26, Appendix A, IV(2) (see attachment #7).

Based on Palm's bid of \$1,106,873.00, 9% total claimed participation would have to exceed \$99,618.57. By determining that McBride, Hashmi, Triumph or Ace or any combination of the three do not meet Cal Trans requirements, the goal of 9% cannot be met.

We request that you find that Palm's bid is non-responsive and award the contract to Western Rim as the lowest responsive bidder.

Sincerely,

Ray C Samuelson
 President

Attachment # 1



Public Works | Public Works Contractors

Public Works Contractors

Who Is a Public Works Contractor?

If you work or bid on a Public Works project, then you are considered a Public Works contractor. The term "Public Works contractor" includes subcontractors. All Public Works contractors must fulfill four key responsibilities.

Public Works Contractor Responsibilities

- Register as a Public Works contractor
- Pay prevailing wages
- Follow apprenticeship requirements for projects \$30,000 or more
- Maintain and submit certified payroll records

Search

To view a list of Public Works contractors with an active registration, use:

[Public Works Contractor Registration Search](#)

For more information and to find exact legal definitions and language please see the Public Works Chapter of the California Labor Code.

July 2016

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Attachment #2

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Contractors and Contractor Registration

1. Who is a Public Works contractor?

A Public Works contractor is anyone who bids on or enters into a contract to perform work that requires the payment of prevailing wages. It includes subcontractors who have entered into a contract with another contractor to perform a portion of the work on a Public Works project. It includes sole proprietors and brokers who are responsible for performing work on a Public Works project, even if they do not have employees or will not use their own employees to perform the work.

2. Who needs to register as a Public Works contractor?

Anyone who fits within the definition of Public Works contractor (above) is required to register with the DIR.

3. Is a contractor who only does Davis-Bacon work under federal contracts required to register?

Registration is required only to bid or work on Public Works projects that are subject to the prevailing wage requirements of the State of California. Registration is not required for projects that are awarded by and under the complete control of the federal government. However, federally funded or assisted projects that are controlled or carried out by awarding bodies in California are subject to the state's prevailing wage laws and therefore require registration.

4. Are there any exceptions to the registration requirement?

The contractor registration requirement does not apply to contractors working solely on Public Works projects awarded prior to April 1, 2015. Some exceptions allow contractors to bid on federally funded projects or submit joint venture bids without first being registered, as long as they are registered at the time the contract is awarded.

5. Who is eligible to register?

Contractors must meet the following requirements to register:

- Have workers' compensation coverage for any employees and only use subcontractors who are registered Public Works contractors.
- Have a Contractors State License Board license if applicable to trade.
- Have no delinquent unpaid wage or penalty assessments owed to any employee or enforcement agency.
- Not be under federal or state debarment.
- Not be in prior violation of this registration requirement once it becomes effective. However, for the first violation in a 12-month period, a contractor may still qualify for registration by paying an additional penalty.

6. How much does registration cost, and how long does it last?

Registration costs \$300 and covers one fiscal year (July 1–June 30), regardless of the date on which a contractor registers. Registration is renewable annually.

7. What if I don't register (i.e., what are the consequences of noncompliance)?

Contractors who are required to register but fail to do so are ineligible to bid or work on a Public Works contract and can be removed from any Public Works project on which they currently are working. For a single violation in a 12-month period, a contractor who is otherwise eligible may still register by paying a \$2,000 penalty in addition to the \$300 registration fee. Registered contractors who inadvertently fail to renew by June 30, but continue to work on Public Works after that date, have a 90-day grace period to renew retroactively by paying a \$300 penalty in addition to the registration renewal fee.

8. How long does it take for DIR to process contractor registrations, verify submitted information, and post contractor information in the registration list that is accessible online?

This process can take less than 24 hours if registration fees (including penalties, if applicable) are paid by credit card. Verification of payment by other means can take up to eight weeks.

9. How can a list of all registered contractors be obtained?

The name and registration number of any contractor who has registered with the DIR can be found using the Public Works contractor search tool. An up-to-date list of all registered contractors can be obtained by entering the percentage symbol, %, in the "Contractor Legal Name" field.

Attachment #3

You receive credit toward the goal if you employ a DBE trucking company that is performing a commercially useful function. The Department uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Contract.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

[49 Fed Reg 59595 (10/2/14) (to be codified at 49 CFR 26.55(d))]

→ **2-1.12B(2) DBE Commitment Submittal**

04-10-15

Submit DBE information under section 2-1.33.

- Submit a copy of the quote from each DBE shown on the DBE Commitment form that describes the type and dollar amount of work shown on the form. Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract in the type and dollar amount of work shown on the form. If a DBE is participating as a joint venture partner, submit a copy of the joint venture agreement.

2-1.12B(3) DBE Good Faith Efforts Submittal

01-23-15

You can meet the DBE requirements by either documenting commitments to DBEs to meet the Contract goal or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal.

If you have not met the DBE goal, complete and submit the DBE Good Faith Efforts Documentation form under section 2-1.33 showing that you made adequate good faith efforts to meet the goal. Only good faith efforts directed toward obtaining participation by DBEs are considered.

Submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the Department finds that the DBE goal has not been met.

Refer to 49 CFR 26 app A for guidance regarding evaluation of good faith efforts to meet the DBE goal.

The Department considers DBE commitments of other bidders in determining whether the low bidder made good faith efforts to meet the DBE goal.

2-1.13-2-1.14 RESERVED

02-21-14

2-1.15 DISABLED VETERAN BUSINESS ENTERPRISES

2-1.15A General

Section 2-1.15 applies to a non-federal-aid contract.

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF ENGINEERING SERVICES
 OFFICE ENGINEER
 1727 30th STREET, MS-43
 P.O. BOX 168041
 SACRAMENTO, CA 95816-8041
 PHONE (916) 227-6299
 FAX (916) 227-6282
 TTY 711
 www.dot.ca.gov

Attachment #4



Serious drought.
 Help save water!

April 18, 2016

Facsimile: (916) 334-0562

Richard McCall, Vice President
 MCM Construction, Inc.
 P.O. Box 620
 North Highlands, CA 95660

08-0Q3004
 08-SBD-138-R17.1/R19.2
 B.O. 3/3/2016

Dear Mr. McCall:

The Department of Transportation (Caltrans) received a letter dated March 16, 2016, from MCM Construction, Inc. (MCM), protesting the bid submitted by Skanska USA (Skanska) for the above referenced contract. The protest alleges that Skanska did not comply with the Revised Standard Specifications of the Contract, Section 2-1.12B (2), *Disadvantage Business Enterprise (DBE) Commitment Submittal*. Skanska listed Tahlequah Steel (Tahlequah) on its DBE Commitment form, but failed to provide a quote. The protest further alleges that Skanska did not provide the exact portions of work that Tahlequah will be performing.

As stated in the Revised Standard Specifications of the Contract, Section 2-1.12B (2) which states in part... "Submit a DBE Confirmation form for each DBE shown on the DBE Commitment form to establish that it will be participating in the Contract." The Office of Business and Economic Opportunity, Contract Evaluation Branch (CEB) reviewed the DBE Commitment submittal and determined that Skanska did not provide a copy of the quote from Tahlequah as required. Therefore, Skanska was not given credit for the services provided by Tahlequah, but did demonstrate a good faith effort to meet the contract goal.

As the protest relates to providing an exact description of the work to be performed by Tahlequah, Caltrans does not require a detailed technical description of the work to be performed.

Based on the above, Caltrans finds that this protest will have no bearing on the award of this contract and will proceed to award the contract to the lowest responsible bidder, provided that all requirements have been met.

If you have any questions, please contact Mulissa Smith, Branch Chief at (916) 227-6228.

Sincerely,

JEFF DEFEVERE
 Office Chief
 Office Engineer, Construction Contract Awards
 Division of Engineering Services

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN JR. Governor

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

P. O. BOX 168041, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

TTY 711

www.dot.ca.gov

Attachment #5



Serious drought.
Help save water!

August 24, 2016

Facsimile: (619) 291-0482

Rasoul Shahbazi, President
Palm Engineering Construction Co., Inc.
7330 Opportunity Road, Suite J
San Diego, CA 92111

11-416804
11-SD-8, 163-2.4, 3.7
B.O. 08/10/2016

Dear Mr. Shahbazi:

The Department of Transportation (Caltrans) received a bid from Palm Engineering Construction Company, Inc. (Palm) on the above referenced contract on August 10, 2016. Palm listed Ace Fence Company to perform 100 percent of the work described as bid item 73 (Alternative Crash Cushion) and also listed Statewide Traffic Safety & Signs to perform 100 percent of the same item of work.

Public Contract Code Section 4106 States in pertinent part:

"If a prime contractor fails to specify a subcontractor or if a prime contractor specifies more than one subcontractor for the same portion of work to be performed under the contract in excess of one-half of 1 percent of the prime contractor's bid, the prime contractor agrees that he or she is fully qualified to perform that portion of work himself or herself, and that the prime contractor shall perform that portion himself or herself."

If Palm is awarded Contract 11-416804, it must perform Bid Item 73 with its own forces.

The Resident Engineer will receive a copy of this letter for Contract Administration and Compliance.

If you have any questions, please contact Mulissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

JILL Y. SEWELL

Office Chief

Office Engineer, Construction Contract Awards
Division of Engineering Services

*** Transmit Conf. Report ***

P.1
CAL/TRANS PLANS COUNTER

Aug 25 2016 04:07pm

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
916192910482	Normal	25:04:06pm	0'39"	1	OK	

STATE OF CALIFORNIA - CALIFORNIA STATE TRANSPORTATION AGENCY

FORMAL RECORDING SYSTEM

DEPARTMENT OF TRANSPORTATION

DIVISION OF ENGINEERING SERVICES

OFFICE ENGINEER

P. O. BOX 16804, MS-43

SACRAMENTO, CA 95816-8041

PHONE (916) 227-6299

FAX (916) 227-6282

TTY 711

www.dot.ca.govSerious drought.
Help save water!

August 24, 2016

Facsimile: (619) 291-0482

Rasoul Shahbazi, President
Palm Engineering Construction Co., Inc.
7330 Opportunity Road, Suite J
San Diego, CA 92111

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If you have any questions, please contact Melissa Smith, Contract Awards Branch Chief, at (916) 227-6228.

Sincerely,

JILL Y. SEWELL
Office Chief
Office Engineer, Construction Contract Awards
Division of Engineering Services

Attachment #6B

* 08-15-16 PD1:37 RCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORTS DOCUMENTATION
DES-OE-0102.11A (REV 12/2014)

Bidder's Name: Palm Engineering Construction Company, Inc.
Contract No.: 11-416804

Page 2 of 3

2. List the names of certified DBEs and all the dates on which they were solicited to bid on this project, include the items of work offered and the dates and methods used for following up initial and follow-up solicitations to determine with certainty whether the DBEs were interested. Attach copies of solicitations, e-mail messages, telephone records, fax confirmations, etc.

Name of DBE Solicited	Date of Initial Solicitation	Items of Work Offered	Follow Up Methods and Dates
SEE ATTACHED			

3. For each item of work made available, indicate whether the Bidder provided plans and specifications specific to the items of work being offered, list the selected firm and its status as a DBE, the DBEs that provided quotes, the price quote for each firm, and the price difference for each DBE if the selected firm is not a DBE. Provide copies of each DBE and Non-DBE quote submitted to the Bidder whenever a Non-DBE firm was selected over a DBE for work on the Contract.

Items of Work	Provided Plans/ Specifications for Work Offered Yes/No	Name of Selected Firm	DBE or Non-DBE	Name of Rejected Firm	Quote (\$)	Price Difference (\$)
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					
	<input type="checkbox"/> YES <input type="checkbox"/> NO					

If the firm selected for the item is not a DBE, provide the reasons for the selection on a separate sheet and attach names, addresses, and phone numbers for the firms listed above. Provide evidence as to why additional agreements could not be reached for DBEs to perform work.

Attachment #6C

08-15-16P01:37 RCVD

STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORTS DOCUMENTATION
DES-0E-0102.11A (REV 12/2014)

Palm Engineering
Bidder's Name: Construction Company, Inc.
Contract No.: 11-416804

4. Describe the Bidder's outreach efforts to identify and solicit the interest of all certified DBEs that have the capability to perform the work of the Contract, provide copies of supporting documents.

Description of Outreach	Date	Location (if applicable)	Results
SEE ATTACHED			

5. Describe the Bidder's efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the Contract to assist them in responding to a solicitation. Identify the DBEs assisted, the type of information provided, and the date of the contracts. Provide copies of supporting documents.

6. Describe the Bidder's efforts made to assist interested DBEs in obtaining bonding, lines of credit, or insurance. Identify the DBEs assisted, the type of assistance offered, and the date. Provide copies of supporting documents.

7. Describe the Bidder's efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related maintenance or services, including supplies and equipment the DBE purchases or leases from the prime contractor or its affiliate. Identify the DBEs assisted, the type of assistance offered, and the date. Provide copies of supporting documents.

8. List the names of agencies and the dates in which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.

9. Include additional data to support a demonstration of good faith efforts.

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

ADA Notice

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(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

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→ **Appendix A to Part 26—Guidance Concerning Good Faith Efforts**

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part 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.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder 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. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

Attachment #7B



(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

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