

Language Federally funded projects

5.3 Race Neutral Measures

The City of Gainesville Regional Transit System will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes anytime a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award.

The City of Gainesville Regional Transit System uses the following race-neutral means to increase DBE participation:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBEs, and other small businesses, participation (e.g. unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of Work that they might otherwise perform with their own forces);
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The City of Gainesville Regional Transit System estimates that, in meeting its overall DBE goal each year, it obtains the entire goal by race-neutral participation and through race-conscious measures.

The following is a summary of the basis of the City of Gainesville Regional Transit System's estimated use of race-neutral and race-conscious DBE participation:

- The City of Gainesville Regional Transit System has had a lot of participation of DBEs in local procurement programs in the previous years.
- The City of Gainesville Regional Transit System distributes bids to all DBEs and non-DBEs.

The City of Gainesville Regional Transit System will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation according to §26.51(f) and it will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedure; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

5.4 Contract Goals

The City of Gainesville Regional Transit System will use contract goals to meet any portion of the overall goal that it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

The City of Gainesville Regional Transit System will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The City of Gainesville Regional Transit System need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type of location of work, availability of DBEs to perform the particular type of work).

5.5 Good Faith Efforts

The City of Gainesville Regional Transit System will award the DBE contract only to a bidder/proposer who makes a good faith effort to meet the DBE contract goal. The City of Gainesville Regional Transit System will determine whether a bidder/proposer has made good faith efforts if the bidder/proposer does the following:

- (1) Documents commitments for participation by DBE firms sufficient to meet the goal; or
- (2) Documents adequate good faith efforts. The bidder/proposer must provide documentation with its bid/proposal that it took all necessary and reasonable steps to achieve the DBE goal or other requirement of 49 CFR Part 26 which by its scope, quantity, quality, intensity and appropriateness of

the different kinds of efforts the bidder/proposer made to meet the objective, could reasonably have been expected to obtain sufficient DBE participation, even if it was not successful.

The City of Gainesville Regional Transit System will determine whether a bidder/proposer has put forth adequate good faith efforts. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.

Information to be submitted

In solicitations for DOT-assisted contracts for which a contract goal has been established, the City of Gainesville Regional Transit System requires the following:

(1) Award of the contract will be conditioned on meeting the requirements of 49 CFR Part 26.

(2) All bidder/proposers will be required to submit the following information to the City of Gainesville Regional Transit System:

- i. The names and addresses of DBE firms that will participate in the contract;
- ii. A description of the work that each DBE will perform;
- iii. The dollar amount of the participation of each DBE firm participating;
- iv. Written documentation of the bidder/proposer's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- v. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
- vi. If the contract goal is not met, evidence of good faith efforts.

The bidder/proposer must present the information required by paragraph (2) of this section under seal bid procedures as a matter of responsiveness.

Failure to provide the above required information shall result in the bid/proposal being deemed non-responsive. Upon a bid/proposal being deemed non-responsive, the bid/proposal will be rejected. The City of Gainesville Regional Transit System reserves the right to accept or reject any or all bids, reserves the right to waive any or all irregularities, and to award the contract to the responsible and responsive bidder/proposer whose bid is determined by the City of Gainesville Regional Transit System to be in its best interest.

The City of Gainesville Regional Transit System makes sure all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before committing itself to the performance of the contract by the bidder/proposer.

Demonstration of good faith efforts

The following list of types of actions will be considered as a part of the bidder/proposer'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 and types of efforts may be relevant in appropriate cases.

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/proposer must 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 to facilitate DBE participation, even when the bidder/proposer might otherwise prefer to perform these work items with its own forces.
- 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.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder/proposer's responsibility to make a portion of the work available to DBE subcontractors and DBE suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and DBE 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/proposer using good business judgment would consider a number of factors in negotiating with subcontractors and suppliers, including DBE subcontractors and DBE suppliers, 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/proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder/proposer to perform the work of the contract with its own organization does not relieve the bidder/proposer of the responsibility to make good faith efforts. Bidder/proposers are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. These decisions should, however, be supportable and documented as part of the required Good Faith Efforts.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The bidder/proposer's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder/proposer's efforts to meet the project goal.

- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, insurance as required by the City of Gainesville Regional Transit System or bidder/proposer/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 contractor's 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.

In determining whether a bidder/proposer has made good faith efforts, the City of Gainesville Regional Transit System may take into account the performance of other bidder/proposers in meeting the contract. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, the City of Gainesville Regional Transit System may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. If the apparent successful bidder/proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders/proposers, the City of Gainesville Regional Transit System may view this, in conjunction with other factors, as evidence of the apparent successful bidder/proposer having made good faith efforts.

