On DOT-assisted ODOT projects that have an established DBE Contract Goal, the Prime Contractor must make sufficient Good Faith Efforts (“GFEs”) to meet the goal. The Prime Contractor can meet this requirement in either one or two ways. First, the Prime Contractor can meet the required goal with sufficient DBE participation. Second, the Prime Contractor can document adequate GFEs to meet the DBE goal on the project. Both ways require ODOT’s review and approval. CFR Title 49, Part 26, Appendix A states that ODOT’s determination concerning the sufficiency of the Prime Contractor’s GFEs is a judgement call and ODOT is not permitted to make the determination using quantitative formulas.

Demonstration of GFEs

A Prime Contractor must show that it took all necessary and reasonable steps to achieve a DBE goal which could reasonably be expected to obtain sufficient DBE participation, even if it was not successful. The documentation should reflect that the Prime Contractor was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not an acceptable demonstration of a Prime Contractor’s GFEs in meeting the DBE contract goal.

A Prime Contractor selecting portions of work to be performed by DBEs will increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (i.e. 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.

Documentation of GFEs

Evidence of GFEs should include, but are not limited to, a list of names, a number of contact attempts, how firms were contacted (i.e. copies of e-mail, letters, etc.), 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 agreements could not be reached for DBEs to perform the work. Please note that documentation provided may be subject to audit by ODOT. ODOT’s GFE Contractor Template must be submitted to ODOT to document a Prime Contractor’s GFEs.

Additional Considerations

The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Prime Contractor’s failure to meet the contract DBE goal, as long as such costs are reasonable.

The ability or desire of a Prime Contractor to perform the work of a contract with its own organization does not relieve the Prime Contractor of the responsibility to make GFEs.

Prime Contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. It should be noted that excessive or unreasonable will be evaluated by ODOT on a case by case basis while reviewing the Prime Contractor’s total GFEs submittal.

In the event of a substitution or a replacement of a DBE on a project, a Prime Contractor’s inability to find a replacement DBE at the original price is not alone sufficient to demonstrate GFEs.

Prime Contractors should select DBE firms that have been DBE certified with the proper NAICS codes for the work the DBE will be performing. Conversely, DBE firms should not commit to work that they do not have the proper NAICS codes to perform.

* http://www.dot.state.oh.us/Divisions/ODI/SDBE/DBE Goal Forms/Good Faith Efforts Template - Contractor.docx