



## Civil Rights Requirements UCI Annual Meeting

Tammy Mancinelli, Civil Rights  
July 17, 2013  
VDOT

# Civil Rights Procurement & Compliance

## Topics for Discussion

- **Procurement – Construction and Consultant**
- **Process Flow Chart**
- **Project Documentation and Compliance**

## Procurement Requirements

- **RFP/RFQ Review – document review**
- **Engineer's Estimate and Scope of Work – DBE goal setting**

# RFP / RFQ Review

## Documentation Matrix

Appendix 17A - Required Contract Provisions and Forms Matrix

Document	Applicable with Funding Source		Construction		Professional Services		Required in contract
	Federal	State	With Goal	W/O Goal	With Goal	W/O Goal	
FHWA 1273	•		•	•			•
EO 11246	•		•	•			•
USDOT 1050.2 Title VI Assurance Appendix A	•				•	•	•
Form C-28 - Basic Hourly Rate Paid By Contractor	•	•	•	•			
Form C-48 - Subcontractor/Supplier Solicitation and Utilization Form	•	•	•	•			•
Form C-49 - DBE Good Faith Efforts Documentation	•		•		•		•
(WH-347) Certified Payroll	•		•	•			

## RFP/RFQ Review and DBE Goals

- **Ten (10) business days for Consultant RFQ review and DBE goals**
  - Civil Rights (CR) ensures applicable federal requirements are included in RFQ
  - Typically a race-neutral goal of 10% plus verbiage (Chapter 17 – Page 12)
- **Twenty (20) business days for Construction RFP review and DBE goals**
  - CR ensures applicable federal requirements are included in RFP
  - Review of engineer's estimate and scope of work to determine race-conscious DBE goal

## Civil Rights Bid Documents

- **Special Provision 107.15 indicates:**
  - **C-111 – Due by 10:00 a.m. the day after bid opening (if submitted at time of bid, updated C-111s are not applicable)**
  - **C-112 – Due three (3) business days after bid opening**
  - **C-48 – Due ten (10) business days after bid opening**
  - **C-49 – If bidder is unable to attain the full DBE goal requirement, this document must be submitted within two (2) business days of bid opening outlining the bidder's good faith efforts**

## Civil Rights Bid Document Review

- **To Be Considered as a Responsive Bidder:**
  - **C-111 Review**
    - **All areas must be filled out accurately**
    - **DBE Firms listed – check the Department of Minority Business Enterprise website to ensure the firms listed are certified DBE firms and certified for the work listed on the C-111**
    - **Indication of Subcontractor, Manufacturer, Supplier or Hauler (Cannot be blank and cannot indicate two items)**
    - **Work Items are clearly listed and specific**
    - **Amount column is accurate**

## Civil Rights Bid Document Review

- **To Be Considered as a Responsive Bidder:**
  - **C-112 Review**
    - **Project numbers listed at the top**
    - **Prime name and signatures at the bottom**
    - **DBE firm names and signatures at bottom**
    - **Separate C-112 for each DBE listed on C-111**



## Civil Rights Bid Document Review

- **To Be Considered as a Responsive Bidder:**
  - **C-48 Review**
    - **All areas filled out**
    - **List of subcontractor/supplier solicitation must list ALL firms contacted for quotes (not just the DBE firms used for credit)**

## Civil Rights Bid Document Review

- **To Be Considered as a Responsive Bidder:**
  - **C-49 Review**
    - **If DBE goal not met with bid submission documents, must be submitted within two (2) business days of bid opening**
    - **All ten (10) pages must be filled out to demonstrate the bidder's good faith effort with locating and securing DBE firms to perform on the contract**

## Failure To Meet DBE Goal Requirements

- **The failure of a bidder to submit the required documentation within the timeframes specified within the Special Provision for 107.15 – Use of Disadvantaged Business Enterprises may be cause for rejection of that bidder's bid.**
- **In order to award a contract to a bidder that has failed to meet DBE contract goal requirements, the Locality will determine if the bidder's efforts were adequate good faith efforts.**

## Good Faith Efforts Guidelines

**The following information is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.**

## Good Faith Efforts Guidelines

### Include the following completed forms:

- ☑ Form C-111 – Minimum DBE Requirements
- ☑ Form C-112 – Certification of Binding Agreement
- ☑ Form C – 48 - Subcontractor/Supplier Solicitation and Utilization Form
- ☑ Form C-49 – Summary of GFE Documentation
- ☑ Copy of the Request for Bid Solicitation to DBEs

☑ **Solicit through reasonable and available means**, such as but not limited to, attendance at pre-bid meetings, advertising, and written notices to certified DBEs who have the capability to perform the work of the contract. Examples include: advertising in at least one daily newspaper of general circulation; phone contact with a completely documented telephone log, including the date and time called, contact person, or voice mail status; and internet contacts with supporting documentation, including dates advertised.

## Good Faith Efforts Guidelines

- Solicit DBEs no less than five (5) business days before the bids are due so that the solicited DBEs have enough time to reasonably respond to the solicitation.
  
- Follow up initial solicitations as evidenced by documenting such efforts on Department standard good faith documentation form, C-49.
  
- Select portions of the work to be performed by certified 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 Contractor might otherwise prefer to perform these work items completely or with its own forces.

## Good Faith Efforts Guidelines

- Provide interested certified DBES with adequate information about the plans, specifications, and requirements of the contract in a timely manner, which will assist the DBEs in responding to a solicitation.
  
- Provide evidence of names, addresses, and telephone numbers of DBEs that were considered for the solicitation; dates DBEs were contacted, a description of the information provided regarding the plans, specifications, and requirements of the contract for the work selected for subcontracting, and, if insufficient DBE participation seems likely, evidence as to why additional agreements could not be reached for DBEs to perform the work.

## Good Faith Efforts

- For DBE bids declared non-competitive, include copies of DBE and non-DBE bid quotes. DBE quotes may be rejected as non-competitive if the DBE sub's quote is more than 10% higher than the non-DBE's quote, as verified by supporting documentation. The prime must contract with the non-DBE sub when declaring a DBE firm non-competitive.
  
- Offered assistance to DBEs in obtaining bonding, lines of credit, or insurance.
  
- Offered assistance to DBEs with information about securing equipment, supplies, materials, or related assistance/services.



## Good Faith Efforts

- ☑ Provided DBEs with adequate information to provide a quote.
- ☑ Effectively utilized the services of appropriate personnel from VDOT, the Virginia Department of Minority Business Enterprise (VDMBE), the Metropolitan Washington Airports Authority (MWAA), and other organizations in the recruitment and utilization of qualified DBEs.

## Construction Phase

- **EEO Program Requirements:**
  - **Locality Responsibility:**
    - **Forward all documentation relating to EEO Program requirements to the District CR Office (DCRO)**
      - EEO Policy
      - EEO Officer
      - EEO Meeting Minutes
      - C-64 (Full Company Employment)
      - C-57 (Project Specific Workforce)
  - **VDOT Responsibility:**
    - **Monitor EEO Compliance – review documentation received and perform EEO Compliance Review when applicable**
    - **Job site visits to review Bulletin Board for applicable posters**

## Construction Phase

- **DBE Program Requirements:**
  - **Locality Responsibility:**
    - **Forward all documentation relating to DBE Program requirements to the District CR Office (DCRO)**
      - All subcontracts between Prime and DBE subcontractors (within fourteen (14) business days of main contract execution)
      - Any documents submitted by Prime related to DBE firm's work
      - Report any 'red flags' of concern at project site to DCRO
  - **VDOT Responsibility:**
    - **Monitor DBE Compliance – DCRO will perform a Compliance Review on each DBE firm listed on C-111 for which the prime is expecting credit towards meeting the goal on the project.**

## Construction Phase

- **DBE Program Regulations Regarding Credit:**
  - **DBE Firms must perform a CUF (Commercially Useful Function)**
    - **Perform**
      - To perform a CUF the DBE alone shall be responsible and bear the risk for the material and supplies used on the contract, selecting a supplier or dealer from those available, negotiating price, determining quality and quantity, ordering the material and supplies, installing those materials with the DBE's own forces and equipment, and paying for those materials and supplies
    - **Manage & Supervise**
      - DBE firm fully performs the DBE's designated tasks with the DBE's own forces and equipment under the DBE's own direct supervision and management

## Construction Phase

- **“Red Flags” – Notify DCRO immediately:**
  - DBE firm allows Prime to negotiate and choose supplier of materials for DBE’s portion of work
  - Prime superintendents supervises and directs DBE firm’s crews
  - Invoices or shipping tickets from suppliers indicate Prime’s name
  - Prime self-performs DBE’s work
  - DBE firm’s employees appear on Prime contractor’s payroll also
  - DBE firm’s equipment indicates a different firm name
  - DBE firm subcontracts a portion of their work to a non-DBE firm

**\*\*Red Flag Issues do not indicate DBE Fraud but must be monitored and reviewed when they occur\*\***

## Construction Phase

- **Labor Compliance Requirements:**
  - **Locality Responsibility:**
    - **Track and monitor compliance on all certified payrolls for the project**
      - Prime contractor is responsible for securing and reviewing all subcontractor certified payroll
    - **Perform Davis Bacon Interviews – must be performed within first 30 days of project start and every quarter thereafter until project completion**
  - **VDOT Responsibility:**
    - **Audit locality's tracking of certified payroll and Davis Bacon Interviews**
    - **Provide training to locality**

## WRAP UP

