

DBE Requirements for Federally Assisted Projects

Consultant Compliance Training

Arizona Department of Transportation

Presented by:

Melissa Boyles

Civil Rights Administrator

September 13, 2011

Overview

- Introductions
- Overview
 - DBE compliance by contract type
 - Pre-award
 - Good Faith Effort
 - Post-award
 - Current issues
- Questions

Introductions

- Name
- Organization
- Type of Organization
 - Prime Consultant or
 - Sub-consultant
 - DBE or SBE?
- Currently working on ADOT projects with ECS?
- Key areas of concern?

Overview

DBE Regulations:

- Compliance with 49 CFR Part 26 is a condition of receipt of federal funding
- In February 2011 ADOT's DBE Program was found to be non-compliant and categorized as "Red"
- There were 19 major audit findings
- Many of the changes to the ADOT DBE requirements are "corrective actions" implemented to address audit findings

Changes Resulting from Audit Findings

- Monitoring and reporting lower-tier DBE participation
- Monitoring and reporting non-DBE participation
- Reviewing subcontract agreements
- ADOT oversight and compliance of sub-recipients
- Post-award enforcement
 - Prompt payment
 - Commercially useful function
 - Use of proposed DBEs
 - Substitutions, terminations, and reductions in scope
- Race-conscious goals assessed

Request for Qualifications Process

Basic ECS Project Types

- Standard Request for Qualifications
 - Stand alone projects
 - Known schedule, scope, and budget
 - DBE participation identified prior to contract execution
- Request for Qualifications: On-Call Projects
 - Issued via task assignment
 - Three to Five year term
 - Scope, schedule, and budget determined for each task assignment
 - DBE participation identified prior to finalizing task assignment

Request for Qualifications Process

- Standard Request for Qualifications
 - DBE goal stated in RFQ
 - Consultants to document in Statement of Qualifications (SOQ) intent to meet DBE goal or submit Good Faith Effort
 - Prime and sub DBE affidavits or Good Faith Effort documentation provided with Cost Proposal Package
- Request for Qualifications: On-Call Projects
 - DBE goal stated in RFQ
 - Consultant to identify DBE sub-consultants in SOQ submission
 - DBE documentation submitted with **each** task assignment cost proposal
 - Each task assignment requires prime and sub DBE affidavits or
 - Good Faith Effort documentation

DBE Documentation

- Must be submitted with cost proposal packet
- Will be reviewed and approved by the ADOT Civil Rights Office
- DBE documentation includes:
 - DBE Affidavits OR
 - Good Faith Effort
- The consultant must submit one or the other
- Failure to submit required documentation will render consultant ineligible for award

DBE Documentation (cont.)

- The affidavit and attachments must be accurate and complete in every detail and must be signed by an officer of the consultant(s).
 - Prime submits overall participation evidencing that DBE goal has been met
 - Prime collects affidavits from DBEs verifying scope and cost submitted in overall proposed utilization
 - Forms to be completed by DBEs and verified by Prime
 - Documents with blanks will be rejected
 - Documents with inaccurate crediting will be rejected
 - DBE credit may only be taken for the work the DBE performs with its own resources and in the area the DBE was certified in

Good Faith Effort

- The consultant will not be considered to have made good faith efforts if the bidder failed to contact the ADOT Civil Rights Office prior to the letting...
- Contact must be made in sufficient time to allow the Civil Rights Office to provide assistance.
- In determining good faith efforts, the Department will take into account the ability of other consultants to meet the DBE goal.
- ...a consultant must show it took all necessary and reasonable steps to achieve the DBE goal...

Good Faith Effort

- The Department will consider the quality, quantity, and intensity of the different kinds of efforts made.
- Types of effort a consultant “must address” when submitting good faith effort documentation:
 - Soliciting DBEs
 - Selecting portions of the work
 - Providing adequate information
 - Negotiating in good faith
 - Not rejecting proposals without sound reason
 - Providing assistance (insurance, etc.)
 - Using the services of minority/women community organizations

Post Award Compliance

- Subcontract Agreements
 - Must be uploaded into the ADOT DBE reporting system
 - Must include all required assurances
 - This includes seven-day prompt payment
 - Thirty day invoicing
 - Online confirmation of payment
 - Online reporting of lower-tier/vendor activity
 - Each page must be initialed and dated by the DBE to be considered valid
 - Contractors executing agreements that materially modify federal regulation or state statute will be found in breach of contract

Post Award Compliance (Cont.)

- Recording Keeping
 - DBE and Non-DBE Payment Reporting
 - DBE and Non-DBE Payment Confirmation
 - Lower-tier Subcontracting
- Online payment reporting is a contractual requirement
 - Consultants must ensure that all DBE and non-DBE subcontract agreements reflect this requirement

Contract Close Out

- Certificate of Payment
 - Must be submitted for each DBE
 - Must be signed by both the prime and DBE sub-consultant
 - Must document receipt of payment in full by DBE
 - Final payment will not be released until all Certificates of Payment have been received

General Compliance

Recent Issues

- Advanced Authorization of Task Assignments
 - ADOT Project Managers do not have the authority to waive DBE requirements
 - Consultants will be held to DBE goal attainment or GFE
 - GFE pertains to each task assignment
 - If consultants fail to contact Civil Rights, GFE will not be accepted
- ADOT “is never going to enforce this” [DBE requirements]
- Suggestions to have DBEs use non-DBE resources
- Timely submission and prompt payment of DBE invoices

Questions?

Questions regarding the requirements or today's training should be directed to:

Melissa Boyles
ADOT Civil Rights Administrator
(602) 712-4071
mboyles@azdot.gov