

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CONSTRUCTION DIVISION MEMORANDUM

GENERAL SUBJECT: GOOD FAITH EFFORTS NUMBER: CD-2002-1
SUPERSEDES: _____
SPECIFIC SUBJECT: DEFINITION OF TERM
"REASONABLE" FOR
CONSTRUCTION -DBE PROGRAM DATE: January 9, 2002

Original w/Signature on file in Construction Division

C. F. GEE
CONSTRUCTION ENGINEER

DIRECTED TO - DISTRICT ADMINISTRATORS

Appendix A, Guidance Concerning Good Faith Efforts, of 49 Code of Federal Regulations (CFR), Part 26, and Section 110.04 of the Specifications, specify that " A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including Disadvantaged Business Enterprise (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 goal as long as the costs are reasonable. Prime Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable."

There exists some confusion regarding the term "Reasonable", in regards to the term as used above.

In order to provide a definition to what is felt to be a vague term, and to ensure understandability and consistency in the application of the aforementioned rule, the following will be utilized as guidance for "reasonableness."

If a Contractor actively solicits for **all items** in the proposal and receives prices from subcontractors for work which they can do, and uses that information in addition to his own internal cost in determining which subcontractor to use, not only to perform the work, but also to meet his DBE requirements, the Contractor may use the low bids. The Contractor may be requested to show his work sheet for the assessment. This in no way relieves the Contractor from demonstrating that he acted in good faith to achieve the project goal.

If a Contractor uses a **selective solicitation** and does not request prices for all items of work in the proposal, then bids within 10% of the lowest bid from a subcontractor would be a reasonable price difference. This means the Contractor should consider using DBEs, providing they are within 10% of the low bid.

A Contractor would be expected to fully show whether he used a selective or non-selective method of solicitation for items of work, and that there were appropriate discussions with prospective subcontractors.

Your continued cooperation in the administration of this program is appreciated.

GCW/HD:gg

C: Mr. Charles D. Nottingham
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Mr. C. F. Gee
Assistant Commissioners
Division Administrators
District Construction Engineers
District Maintenance Engineers
District Materials Engineers
District Equal Opportunity Managers
District Contract Administrators
Resident Engineers
Project Engineers
Project Inspectors
Federal Highway Administration
Virginia Department of Minority Business Enterprise
Virginia Road and Transportation Builders Association
Old Dominion Highway Contractors Association
Virginia Asphalt Association
Virginia Aggregates Association Inc.
American Concrete Pavement Association
Virginia Ready-Mixed Concrete Association
Precast Concrete Association of Virginia