



July 19, 2018

City of Calexico
608 Heber Avenue
Calexico, CA 92231-2840

Attn: Lilliana "Lily" Falomir
Public Works Manager – Administrative

Re: Cesar Chavez Blvd. Improvements
Federal Project No.: HPLUL-5168(017)

Subj: Response to GFE Determination

Dear Ms. Falomir:

On behalf of Granite Construction, our request of the City of Calexico is to award contract HPLUL-5168(017) to Granite Construction. We emphasize that the DBE regulations at 49 CFR Part 26 and specifically Appendix A, direct the agency to evaluate a bidder's good faith effort based on a fair and reasonable judgment and not to evaluate the good faith efforts based on quantitative formulas. The City of Calexico correctly applied the Appendix A directive in its initial determination that Granite demonstrated a good faith effort to meet the DBE goal.

Granite made a sincere bond fide good faith effort to meet the Disadvantaged Business Enterprise goal on HPLUL. Granite has a DBE Corporate Compliance Program and Policy that each Granite office in California and nationally fulfills. We pursue each project with the objective to meet the DBE goal.

Our documentation shows the quality, quantity and intensity we took in soliciting quotes from 534 DBEs. We did not just contact the DBEs once, not twice, but four times, plus other efforts. Key to our solicitation efforts and as directed by the DBE regulations, is to solicit DBE quotes from firm who are certified as a DBE in the type of work the project requires and that the DBE is listed on the California Unified Certification Program directory.

As required by Caltrans Local Assistance Program Manual (LAPM), Chapter 9, the recipient of Caltrans Local Assistance funding, must make the determination that the bidder met the DBE project goal or demonstrated adequate good faith efforts. The City of Calexico adequately evaluated Granite's DBE participation and the good faith effort documentation. The City of Calexico initially determined Granite demonstrated adequate good faith efforts to meet the 15% DBE goal on contract HPLUL. The good faith effort documentation and the City's initial determination of Granite demonstrating a good faith effort was shared with Caltrans Office of Business and Economic Opportunity (OBEO). The LAPM, Chapter 9 does not require the City to obtain a second opinion on its initial DBE compliance determination.

The OBEO determination was different from the City and that resulted in an Administrative Reconsideration Hearing. During the Administrative Reconsideration Hearing Granite presented clarification to address the OBEO evaluation.

The good faith effort clarifications that were shared with the Administrative Reconsideration Panel are:

1. **According to the documentation provided, Granite advertised for DBE participation at least 7 days prior to the bid opening date.**

Granite advertised in the Minority Bidders Bulletin, Weekly Bid Flash, California Asian American Chamber of Commerce, California Black Chamber of Commerce, and the California Hispanic Chamber of Commerce. In addition, we sent out a solicitation via e-mail and fax to companies listed in the CUCP website. Our initial advertisement was 13 days prior to the bid date. This was an adequate timeframe for potential firms to respond to the solicitation.

Without a specific measurement of what is the sufficient number of days to advertise; Granite adequately and timely posted the advertisement in different publications 13 days prior to bid date.

DBE rule:

The DBE regulations at 49 CFR Part 26, Appendix A and the LAPM, Chapter 9 and the HPLUL contract special provisions regarding Good Faith Efforts, do not identify or specify the number of days a bid solicitation advertisement must be posted.

2. **The disparity in the number of DBEs that were sent an invitation to bid (534 mailed, 513 faxed) with the number of DBEs that were contacted by telephone (52).**

Nothing in the statute requires phone calls, only follow-up. We not only sent follow-up notices, but took the additional step of making phone calls to those firms we work with. We sent our initial solicitation on 5/11 and then did the following follow-up efforts:

- a. Follow-up solicitation on 5/16
- b. Addenda notification on 5/18
- c. Addenda notification on 5/21
- d. Bid date reminder on 5/23
- e. Follow-up phone calls

Granite solicited 534 DBEs by email five times. Granite faxed the solicitation to 513 of the 534 DBEs because the 513 DBEs included a fax number in their business profile as shown in the Caltrans DBE Directory DBE. Granite made calls to 52 DBEs as a result of an error message on their email address or fax number and based on the DBEs responding as interested in submitting a quote to Granite on this project.

As stated in the DBE rule, soliciting a DBE with one written notice or email is the measurement of good faith effort. Granite was sincere in obtaining quotes from DBEs and we did not stop at one written notice or email. We had five written follow-up efforts and made phone calls to DBEs showing an interest. Two of the email follow-up efforts was to advise the DBEs of the addendums that could affect their quote to us. This is further evidence that Granite is looking out for the interest of the DBEs so that they can provide a quote that meets the project specification, conditions and incorporates the addendums.

Granite actively and aggressively solicited DBE's and received DBE quotes on bid day as a result of our outreach efforts.

DBE rule:

49 CFR Part 26, Appendix A, section A (1) and (2) states

*A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, **written notices or emails** to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.*

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

3. Granite did not provide a copy of its query to the California Unified Certification Program (CUCP).

Granite uses the California Unified Certification Program (CUCP) for all solicitations sent out to potential DBE subcontractors and suppliers. This list is downloaded weekly from the Caltrans website by Melinda Henry into Excel and is uploaded via Excel the same day into our SmartBid Software. We utilize the SmartBid software as it allows us to track solicitations efficiently and provides an online plan room, but all data is still harvested from the CUCP Website. Attached is the excel file that was used to upload data into our software and a log showing the dates in which data from the CUCP website was uploaded into our SmartBid software.

The CUCP directory of certified DBEs is fundamentally the first choice to conduct our research and identify DBEs that have the certification and work code designation to perform the work of the contract. Granite used the CUCP directory to identify certified DBEs interested in performing work in Calexico and who have the appropriate work code designation. The result was 534 DBEs. As previously stated Granite solicited quotes from the 534 DBEs were found on the CUCP directory. SmartBid is a data management tool that allows us to download the business profile information on the 534 DBEs from the CUCP directory and track our solicitation efforts and contact results. In our good faith effort package we chose to provide the SmartBid spreadsheet which is much more streamlined than providing 534 individual sheets that identifies the 534 DBEs solicited. The SmartBid spreadsheet results match the CUCP query we made to identify the 534 DBEs that were solicited.

4. In its Evaluation of Good Faith Efforts Memo, Calexico merely restates the items of work that were purported to be made available to DBEs rather than analyzing if Granite made sufficient work available to DBEs.

This is outlined in Tab 2 of our Good Faith Effort. We made 75.05% of the work available to the DBEs by selecting the work codes that were applicable to our work through our SmartBid software (that included a CUCP upload).

The City of Calexico adequately determined that Granite made available 75.05% of the work available to DBEs. To elaborate, the CUCP directory allows the contractor to identify the parameters in seeking DBEs who may be interested in quoting the project. For this project the query parameters were District 11 and filtered by 75% of the different categories and type of work required to perform on this project. We filter the results so

that we are not sending solicitations to firms who do not provide a service required to complete the contract, for example florist, office equipment vendors and IT consultants.

Additional evidence that Granite made sufficient work available to DBEs in the different work categories and type of work is to simply review the 534 DBEs solicited. You will see that Granite solicited DBEs meeting the different categories and types of work required for this project.

- 5. Were quotes rejected for valid reasons? For instance, Calexico should have compared the pricing rates between the rejected DBE quotes and accepted non-DBE quotes.** Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Also, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. We rejected DBE quotes that were 28.8%, 51.9% and 19.6% higher than the low quote. The higher quotes were, in our assessment, excessive and unreasonable.

DBE Rule

Appendix A, Section D(2) states “*Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.*”

- 6. Bidder Comparison of DBE Commitment.**

The City of Calexico adequately applied the totality of Granite’s good faith efforts and determined the quality, quantity, and intensity of the different solicitation efforts made, met the DBE regulations, the LAPM, Chapter 9 and the guidance in 49 CFR Part 26, Appendix A.

We solicited quotes from 534 DBEs. We did not just contact the DBEs once, not twice, but four times, plus other efforts. We advertised for 13 days in different publications. We made calls to DBEs who either showed an interest or we know did not get our initial solicitation due to an error message. A measurement that our solicitation efforts were fruitful is the fact that we received bids from DBEs. we received bids from DBE and non-DBEs on bid date and we considered all bids and made decisions based on the quotes received.

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The City of Calexico initial determination to award the contract to Granite remains correct. Granite requests that this correspondence be addressed prior to any award on this Contract and that a copy be provided to the City Council for review. Should you have any questions or require additional information, please do not hesitate to contact me at (760) 578-3138.

Sincerely,

GRANITE CONSTRUCTION COMPANY

A handwritten signature in black ink, appearing to read "JR", written in a cursive style.

Joe Richardson
Regional Chief Estimator