

**STATE SYSTEM OF HIGHER EDUCATION
COMMONWEALTH OF PENNSYLVANIA
SDB REQUIREMENTS INSTRUCTIONS**

1. Scope

These SDB Requirements Instructions are applicable for construction contracts procured and administered by the System. These SDB Requirements Instructions are unique to the System.

The SDB Requirements Instructions and the processes contained herein have been implemented as an interim program by the System, and may be changed in the future.

2. Definitions

The following words or terms are defined as stated when used herein, unless clearly indicated otherwise.

MBE/WBE: Minority-Owned Business Enterprise/Woman-Owned Business Enterprise; a business that is owned and operated by a person or persons considered to be a minority due to race/gender.

VB/SDVB: Veteran-Owned Business/Service-Disabled-Veteran-Owned Business; a business as defined in PA Act 185 of 2012, which provides for contracting with veteran-owned small businesses.

Small Business: a business which meets the requirements of the Pennsylvania Department of General Services (DGS) Small Business Procurement Initiative for self-certification as being Small.

SDB: Small Diverse Business; an MBE, a WBE, a VB, or an SDVB, any of which is also a Small Business.

Certified SDB: an SDB verified as such by DGS. Hereinafter, Certified SDB are simply referred to as SDB, in both the singular and the plural.

Non-Minority Firm: A business that cannot be classified, or has not been verified or certified, as an SDB.

REAA: Reasonable Effort Award Amount; that amount of the work under a construction contract for which competitive quotes can reasonably be expected to be obtained from SDB subcontractors, suppliers, and/or vendors. The REAA is expressed as a percent, and is applied as a percentage of the prime bidder's bid (usually applied against Base Bid No. 1).

Proactive Solicitation: Aggressive effort taken by a prime bidder to obtain written quotes from SDB subcontractors, suppliers, and/or vendors, which the prime bidder can then submit with his/her bid so as to reach or exceed the REAA for the Contract.

Commitment: A conditional written promise that a subcontractor's, supplier's, and/or vendor's written quote given at the time of bid will be honored, in at least the amount quoted, or in a lesser amount if acceptable by mutual negotiations, for the scope of work and/or materials specified.

Subcontract: The term subcontract shall include subcontracts for construction services, purchase orders for construction materials and/or equipment rental, or some combination of the two, or similar arrangements. Hereafter, no distinction is made between subcontract, purchase order, rental agreement, or other similar arrangement. The same applies for subcontractor, supplier, and vendor.

3. Proactive Solicitation Policy

Prime bidders submitting bids for System construction contracts shall proactively solicit SDB and encourage them to submit written quotes for portions of the work as subcontractors. If a quote from an SDB is the lowest received for that portion of the work, if that quote is responsive, and if the prime bidder determines that SDB to be responsible, then the prime bidder shall make a commitment to award a subcontract to that SDB.

4. Acceptable Proactive Solicitation

An REAA for each Separate Prime contract is established by the System and is provided in the Special Instructions to Bidders. The REAA is based on the scope of work of the project and contract, and the current demographics concerning ready, willing, and able SDB subcontractors in an appropriate geographic area.

An acceptable proactive solicitation effort by a bidder is considered to be, at a minimum, solicitation effort such that competitive quotes totaling the REAA could reasonably be expected to be received from SDB.

- a. Normally it takes multiple solicitations in order to reasonably expect to receive a quote. The number of solicitations that may be needed varies, depending on the size of the project, the scope of work being solicited, the dollar value of the work being solicited, the location of the project, the location of the SDB being solicited, etc.
- b. In some cases it may take solicitations of various scopes of work of lesser value to total the value of the REAA. In such a case, multiple solicitations for each scope of work would most likely be required.

Evidence of proactive solicitation of the REAA is considered in determining the responsiveness of a bid. A bidder shall be considered to have fulfilled the requirement to conduct acceptable proactive solicitation in one of the following three ways. All actions shall be as of the time of bids.

- a. If the bidder makes commitments to SDB at or above the REAA at the time of bids, the bidder will be considered to have met the proactive solicitation requirements.
- b. If the bidder does not make commitments to SDB at or above the REAA at the time of bids, the bidder must have conducted acceptable proactive solicitation for the value of the REAA, with one or a combination of the following occurring.
 - (1) An acceptable proactive solicitation effort was made to obtain quotes from SDB, but written quotes were not received from any of them, and/or
 - (2) A written quote was received from an SDB, but a lower written quote was received from a Non-Minority Firm for the identical scope of work, and a commitment was made to that Non-Minority Firm.
- c. A combination of items a., b.(1), and b.(2) above is acceptable. A portion of the REAA may be fulfilled by commitment to an SDB, with the rest of the REAA being fulfilled through acceptable proactive solicitation.

5. Submission Requirements for Evidence of Proactive Solicitation

Bidders must show proof of their proactive solicitation by submitting with their bid a completed SDB Solicitation Form and copies of the following, as appropriate:

- a. All written solicitations to SDB.
- b. All solicited and unsolicited written quotes received from SDB.
- c. Any written quote from a Non-Minority Firm that is lower than the lowest quote received from an SDB, and which is the basis of a commitment to that Non-Minority Firm.
- d. Any letters of commitment to SDB or Non-Minority Firms submitting the lowest written quotes.
- e. Explanatory information, if not obvious from other information submitted, which provides reasons, if known, why written commitments were not made for the lowest written quotes received from SDB, and/or other reasons why the REAA could not be met.

If the prime bidder is an SDB, he/she must indicate on the SDB Solicitation Form that they are a DGS-verified SDB, and list any verification or certification number(s) or documentation. No proactive solicitation or other documentation is required.

6. Determination of Responsiveness

The procurement office issuing the Contract will review the documentation submitted and determine, based on the documentation submitted, whether acceptable proactive solicitation was conducted. If the Contracting Officer determines that the bidder did not perform acceptable proactive solicitation, the Contracting Officer may determine the bid to be non-responsive and reject the bid.

The review and determination will consider, among other things, the following requirements:

- If the SDB Solicitation Form was fully completed, and if all supporting documents were included.
- If the bidder listed all those SDB to which solicitations were made.
- If the bidder identified the scope of work and/or materials solicited from each SDB.
- If the bidder identified the SDB by verification number, certification number, or similar designation.
- If the bidder contacted SDB directly and requested written quotes for specific work or materials. Mailings to large numbers of SDB which are intended to provide notice of a bidder's interest in bidding a construction project may be deemed to not be acceptable proactive solicitation.
- If the bidder provided sufficient time for SDB to properly prepare quotes.
- If the bidder submitted all solicited and/or unsolicited quotes from SDB.

The review and determination may also include, among other things, the following considerations.

- Did the bidder solicit a varied selection of SDB which appear to be categorized as performing the required subcontracting effort?
- Did the bidder solicit appropriate scopes of work to the various SDB? Scopes of work that are too small, oddly organized, or cut out of a larger scope may not be of interest to some SDB; scopes of work that are too large or include other trades or specialties may not be within the capacity of some SDB.
- Did the bidder solicit SDB in a geographic locale such that they would reasonably be expected to quote on the project, or outside that locale? Did the bidder make an effort to solicit all the appropriate SDB within a reasonable geographic locale, or simply solicit a set number?
- Was the bidder supportive of solicited SDB in order to obtain their quotes? Was the scope of work being solicited clear? Did the solicitation indicate where and how the plans and specifications could be reviewed? Was the time for submitting a quote clear and adequate?
- How many quotes did the bidder get from SDB, even if some or all of them were not competitive? How many quotes were received, and what percent of the REAA did they represent? If quotes were received, depending on the number and percent, the proactive solicitation effort may not be required to be as demanding as if no bids or quotes were received.
- Was the bidder able to make some commitments to SDB, even if at below the REAA? For what percent of the REAA were commitments made? If commitments were made, depending on that percentage, the proactive solicitation effort for the remaining dollar value to reach the REAA may not be required to be as demanding as if no commitments were made.
- Did the bidder receive a low quote from an SDB, but that SDB then refused a commitment?
- How clear and convincing is the bidder's explanatory information as to why he/she was otherwise not able to meet the REAA?

7. Contractual Obligations

The bid of the successful bidder, including the completed SDB Solicitation Form and accompanying documents regarding solicitation and commitments to SDB, shall be considered as incorporated in and become contractual obligations under the terms and conditions of the Contract awarded to that bidder.

If an SDB submits a quote that is the lowest quote for a specific scope of work and/or materials, the

successful bidder is obligated to offer a commitment, at the time of bids, in the amount quoted to that SDB, but only to the extent that there is an agreement as to the scope of work and/or materials specified at the time of bids. The successful bidder may, however, offer a commitment to an SDB whose quote was not the lowest quote.

If accepted by an SDB, a commitment to that SDB made at the time of bids must be culminated with a subcontract or purchase order of at least the dollar value of the commitment, unless otherwise agreed upon by the SDB. If a commitment is not accepted by the SDB, a commitment may be made to any other qualified subcontractor without penalty of invalidating the bidder's SDB proactive solicitation.

The System will send copies of the successful bidder's Notice of Award letter, or other notification, to those SDB who presented the lowest quotes and/or received commitments from the successful bidder at the time of bids. These copies will serve as notice to those SDB to anticipate award of subcontracts for the project.

Failure to follow the above procedures constitutes a potential breach of the requirements of the Contract, and may be grounds for termination of the Contract. In any event, the Contract Sum will not be adjusted to accommodate rejected commitments made to subcontractors to satisfy SDB requirements.

Other contractual requirements relative to the SDB program are in the Standard Form of Contract and the General Conditions of Contract.