



Engineering | Architecture | Planning | Allied Services

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January 14, 2013

City of Leesburg / Leesburg International Airport  
501 West Meadow Street  
Leesburg, Florida 34749

RE: Leesburg International Airport  
Airport Security Fence and Gates  
FDOT FM No. 420830-1-94-01  
City of Leesburg Bid No. 130081  
**RECOMMENDATION OF AWARD**

Gentlemen:

Hanson Professional Services Inc. has completed the tabulation and analysis of bids received January 10, 2012, for the referenced project. The certified tabulation is attached. It is our understand the total project will be funded by the FDOT.

As part of the bid evaluation process, we have reviewed the Disadvantaged Business Enterprise (DBE) submittals of the three bidders for the referenced security fence and gates. Two of the bidders met the established goal of 13.43%. The low bidder, Gomez Contracting Company, has not met the goal, indicating DBE participation of 1.26%. The question is whether the low bidder made a good faith effort. Good faith efforts are described in Appendix A to 49 CFR Part 26. We have excerpted this section and included it as Attachment 1 to this letter.

Paragraph II of Attachment 1 requires the Sponsor (City of Leesburg) to review the submittals and to "...make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts." Some of the criteria that should be considered are provided in Paragraphs IV and V of the attachment. We have used this document as the guideline in reviewing DBE submittals, and offer the following opinion of the good faith efforts.

Section A Paragraph IV of Attachment 1 states that a bidder should solicit proposals from certified DBEs "through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices). The bidder must solicit their interest within sufficient time to allow the DBEs to respond to the solicitation." In our evaluation, no documentation was provided that any advertising/soliciting DBE participation occurred. In the documentation provided by the low bidder, correspondence between two DBEs who declined to bid was done the last week prior to the bids due date. In our evaluation this was not sufficient time to possibly negotiate and accept a proposal from one or both DBEs or solicit proposals from other potential DBEs.

Section B of Paragraph IV state that bidders should select "portions of the work to be performed by 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 prime contractor might otherwise prefer to perform these work items with its own forces." In the documentation submitted by Gomez they received a quote from a firm, KMG Fence LLC, but did not accept their quote and attempted to award to them certain items from the quote supplied by KMG. KMG declined. There is no indication that Gomez attempted to negotiate KMG's proposal in order to meet the goal. The items quoted by KMG were less than those submitted by Gomez' bid except for one, and therefore appears to be reasonable.



Paragraph V of Attachment I states "In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract." The other two bidders did meet the goals. This raises the question of how aggressively the low bidder was in attempting to achieve the designated goal. In our evaluation the good faith effort was not aggressive enough considering the other two bidders achieved it.

Mandatory requirements such as the DBE participation, good faith effort cannot be waived. The Disadvantaged Business Enterprise Program form states, in part, "The bidder/offeror...submits documentation demonstrating good faith efforts." Our experience has been that the documents submitted are generally the basis for evaluating the good faith effort." The three bids submitted are as follows:

<b>Bidder Name</b>	<b>Total Base Bid</b>	<b>Total Alternate Bid</b>
Gomez Construction Company	\$410,777.77	\$ 3,500.00
Electric Services Inc.	\$419,531.45	\$11,187.50
Smith Industries Inc.	\$437,800.37	\$ 2,100.00

We note the following discrepancies in the bids submitted:

Gomez:

- a. On Page 111-3 the acknowledgement of Addendum No. 1 is January 17, 2013.
- b. Item 51 on the Bid Form for control and data lighting arrestor was extended erroneously. The actual extended total is \$1,320.00 not \$990.00. However, it did not affect the total of \$410,777.77.
- c. The Alternate Bid total is \$3,500.00 not \$3,520.00.

Smith:

- a. On Page 111-7, Item 24 was extended erroneously. The actual extended total is \$4433.40. This changes the Base Bid to \$437,800.37.

We consider these discrepancies to be minor and immaterial in nature.

In our opinion Gomez Construction Co. did not exert a good faith effort in securing DBE participation. As a result we recommend awarding the Base Bid (\$419,531.45) plus the Alternate Bid (\$11,187.50) for a total amount of \$430,718.95 to Electric Services Inc. as the low responsive and responsible bidder.

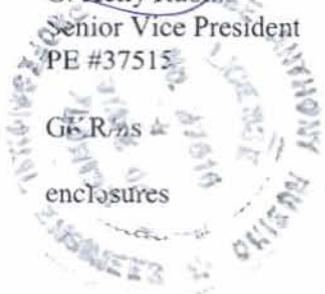
Hanson Professional Services Inc. is pleased to be of continuing assistance on this project. Please contact me if there are any questions.

Sincerely yours,

**HANSON PROFESSIONAL SERVICES INC.**

G. Kelly Rubino  
Senior Vice President  
PE #37515

GKR/rs  
enclosures



## ATTACHMENT 1

### TITLE 49 - TRANSPORTATION

#### SUBTITLE A - OFFICE OF THE SECRETARY OF TRANSPORTATION

#### PART 26 - PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

##### subpart f - COMPLIANCE AND ENFORCEMENT

##### Appendix A to Part 26 - Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet *this* requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g.

attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by 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 prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including 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 DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.