

EXHIBIT 76

From: "[REDACTED]" <[REDACTED]@rcid.org>

To: "[REDACTED]" <[REDACTED]@rcid.org>

Subject: RE: DSBE Credit FYI

Date: Thu, 15 Dec 2022 16:35:32 +0000

Importance: Normal

Inline-Images: image002.png

This all is sensitive to easy tangents. [REDACTED] is firmly against the entire program and his bias shows. I argued this with him. Honestly, it's really because he doesn't want the additional work for his group. They are reaching critical mass. I try to be sympathetic, but this program is being done more and more frequently in the world. I am in support of the program, but have seen enough to know we need to be careful not to bury ourselves. [REDACTED] also supports keeping it simple.

This observation with JD and the trucking is glaringly obvious at where it *can* hurt us. JD has their own trucks and certainly the best lines on sources of embankment material in the area. It's clear that the subcontracted method in this case on trucking because it seems to have inflated the percentage within the rules. Additionally, we as a municipality/owner, are now literally buying that percentage. Not unusual, but perhaps in the magnitude of Millions. I'm sure JD can offer a much lesser price if using their usual methods. That is my biggest take away. It incentivizes us to be aware of just how far we should set that target per project.

Ultimately [REDACTED] there is an optimum percentage that best balances investment and return on that investment. What are bragging rights worth? This is very difficult to answer. Thanks for listening.

I agree, with not submitting an addendum beyond referring to literature that is already in the bidding instructions. I'll get with [REDACTED] to make sure none of the other bids had concern.

[REDACTED]

[REDACTED]

[REDACTED]

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From: [REDACTED] <[REDACTED]@rcid.org>

Sent: Thursday, December 15, 2022 10:55 AM

To: [REDACTED] <[REDACTED]@rcid.org>

Subject: RE: DSBE Credit FYI

[REDACTED]

Thanks for jumping in and bringing this to my attention for another look.

As I read the excerpted provisions, I agree with you. I wasn't fully comprehending the matter at the DSBE subcontractor level as [REDACTED] was reading the provisions to me over the phone. I believe, given the way the provisions are written, that there is no ambiguity and that JDC was correct in identifying the amount of DSBE participation as such pertains to the Contractor's provision, transportation and placement of earthen fill in its bid submission.

Subject/verb relationships always matter and they matter in the context of the third provision you've excerpted, below. What initially appears to be a contradiction from one sentence to the next is not. The exception of costs that do not count toward DSBE participation is applicable to materials and supplies purchased from or the of equipment leased by the DSBE Subcontractor from the Prime Contractor. It's clear as written. Presuming the subject trucking

#155264.1

subcontractor is not purchasing the fill dirt from JDC, the cost of the fill can and should be included in the total amount that can be attributed to DSBE participation.

My bad. Sorry for confusion. Thank you again for letting me have a second look.

Nothing to do but accept the submission and move on. No addendum needed.

[REDACTED]

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From: [REDACTED] <[REDACTED]@rcid.org>

Sent: Wednesday, December 14, 2022 5:43 PM

To: [REDACTED] <[REDACTED]@rcid.org>

Subject: DSBE Credit FYI

[REDACTED] indicated that he spoke with you on this subject. Be careful how you read the paragraph when it describes the materials. It is written to credit the sub level participation and includes material purchased and provided by that sub excluding anything obtained through Prime sources as part of that portion of the contract. I had to explain to [REDACTED] that he is reading this paragraph as a contradiction. It's not. I don't love this either.

Our language matches the Federal language. Read paragraph 3 below.

Ours:

#155264.2

Federal:

DSBE as the Prime Contractor: One-hundred percent (100%) DSBE credit for that portion of the work performed by the DSBE's own forces, including the cost of materials and supplies for a construction contract.

DSBE as a Joint Venture Contractor: One-hundred percent (100%) credit for that portion of the total dollar value of this Contract equal to the distinct, clearly defined portion of the work performed by the DSBE's own forces.

DSBE as a Subcontractor: One-hundred percent (100%) credit for the work of the subcontract performed by the DSBE's own forces, including the cost of materials and supplies, excluding the purchase of materials and supplies or the lease of equipment by the DSBE Subcontractor from the prime Contractor or its affiliates. Work that a DSBE Subcontractor in turn subcontracts to a non-DSBE firm does not count toward the DSBE commitment.

DSBE as a Regular Dealer (Material Supplier): Sixty percent (60%) DSBE credit for the cost of the materials or supplies purchased from a DSBE regular dealer. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

DSBE as a Manufacturer: One-hundred percent (100%) DSBE credit for the cost of materials or supplies obtained from a DSBE manufacturer.

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the

I pulled the following language from **Code of Federal Regulations**. Title 49 Subtitle A Part 26

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Like I have said all along, this whole program is an easy slippery slope. When we force higher participation onto anyone, we can end up paying above premium to gain that percentage. JD's bid for 10M on trucking is a perfect example. Nobody can truck and source fill locally better than JD. But... they intend to source trucking and the trucker's

source for some unknown amount of earthwork/import to gain a fat percentage. Contrary-SEMA habitually, engages with truckers for DBE participation, but Brad buys the material directly. The Participation he claims is limited to trucking only.

██████ is championing a very difficult program. We should chat more.



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