

EXHIBIT 77

From: [REDACTED]
To: [REDACTED] FYI
Date: Friday, December 16, 2022 7:02:20 AM
Attachments: [image002.png](#)

All very good points and I agree.

JD is very high. Likely not the winner at this point. We did ask the others to revisit their lower percentages. I agree on your assessment of [REDACTED] team needing more administrative help. The lift on Minority monitoring will likely warrant it, since the group does handle several small projects as a time. Small= large on these types of tasks.

Thank you for your support.

[REDACTED]

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From: [REDACTED] <[REDACTED]@rcid.org>
Sent: Thursday, December 15, 2022 4:25 PM
To: [REDACTED] <[REDACTED]@rcid.org>
Subject: RE: DSBE Credit FYI

[REDACTED]

I certainly understand and definitely share your concerns. We will always need to evaluate the benefits derived from contributing to the advancement of the DSBE community against any premium of cost to RCID in doing so.

I don't believe that JDC is the low bid on this project; at least they weren't on original bid day. I've not been advised of any concrete changes to the bid amounts as of yet, pending issuance of the addendum now scheduled for issuance on January 5, 2023. I would be hard pressed to make a recommendation to award to JDC with a total bid amount that is either 10% or 20% higher than the other two bids, respectively, absent any compelling justification to do so. Needless to say, I'm anxious to learn how any revised bids shake out.

While JDC's DSBE participation numbers are impressive, it seems evident that the participation comes at a considerable premium of cost. To your point, JDC's bid amount would almost certainly be considerably less if they were to follow their conventional norms and self-perform rather than subcontract key elements of their work.

At this particular point in time, considering RCID's current inability to access the bond or commercial markets for the remaining funding needed to complete WDN Phase III or any other future CIPs, I question which is more prudent: paying a premium for participation that meets or exceeds our 15% benchmark goal or accepting a lesser degree of participation to avoid or mitigate that cost premium. Those are decisions that will not be taken by me but, ultimately, by District Administration (and I would suggest, with the knowledge and involvement of our [REDACTED], [REDACTED] but that should also be for John to decide). Personally, I think it is important that [REDACTED] understand the reality that a strong commitment to a DSBE program often comes at a premium of cost. The question then becomes, what is RCID's appetite with regard to what amount of cost premium, if any, is

acceptable.

I have long been aware of [REDACTED] frustrations and his reservations about the DBSE program, especially given the additional work it causes for his group, which is a lean group. I have nothing but sincere empathy for those who are shouldering the additional burden, especially without additional resources.

I believe [REDACTED] is trying to craft and foster a program that is, to the extent possible, as easy as practicable for bidders and all other involved stakeholders to follow. Perfect? No, not yet. Change from past practices? Absolutely. That makes it uncomfortable. But with most change, once embraced and recognized as part of any newly adopted process, the pain diminishes as the process is implemented and practiced and the wrinkles get smoothed out.

I would imagine, depending on the result of RCID's pending reorganization, that in planning for the next budget year, RCID may want to consider hiring another administrative person to assist with the additional burden of monitoring DBSE compliance. Whether that position resides under Public Works, Procurement or Finance seems of little importance. What I think *is* important is to recognize and accept that it's an unreasonable expectation to create more work for folks with the adoption of a new program, such as this one, without realizing the need for the additional resources that will most certainly be needed to properly administer same. I don't think our DBSE program is going away. I believe it is here to stay and that RCID is committed to fostering its success. That realization should rightfully be reflected in head count.

[REDACTED]

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From: [REDACTED] [REDACTED]@rcid.org>
Sent: Thursday, December 15, 2022 11:36 AM
To: [REDACTED] <[REDACTED]@rcid.org>
Subject: RE: DSBE Credit FYI

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]

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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 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]

[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:

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 [REDACTED] buys the material directly. The Participation he claims is limited to trucking only.

[REDACTED] is championing a very difficult program. We should chat more.

[REDACTED]

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