

M E M O R A N D U M



SUBJECT: Policy Memorandum No. 19-03,
Responsiveness to DBE Goal

DATE: September 5, 2019

FROM: PRMT- T. Suzette Moore

TO: All PRMT Personnel

PURPOSE:

This Policy Memorandum (PM) sets forth guidance regarding the issue of responsiveness at bid submission.

EXPIRATION DATE:

This PM is effective immediately and remains in effect until canceled or superseded.

REFERENCE:

1. Procurement Procedures Manual (PPM), Chapter 7, Socioeconomic Programs.
2. Procurement Procedures Manual (PPM), Chapter 9, Procurement by Competitive Sealed Bidding.
3. 49 CFR Part 26

BACKGROUND

Pursuant to section 7-2-6 (b) of the Procurement Procedures Manual (PPM), the Contracting Officer (CO) is required to insert certain language into each solicitation for a Federally Assisted Contract for which a DBE participation goal has been established. The language states that Prime Contractors are required to meet the goal or request a waiver and to provide documentation of the efforts to meet the goal. Section 9-16 of the PPM further states bids must be filled out, executed, and submitted in compliance with all instructions in the bid solicitation. Bids that do not meet these requirements are to be deemed non-responsive and must be removed from consideration for award. A bid is responsive if it conforms in all material aspects to the requirements of the solicitation at the scheduled time of submission and does not require further discussions with the bidder.

An issue occurs where the prime submitted a list of Disadvantage Business Enterprises (DBEs) which were certified by WMATA at the time the bid was submitted. However, between the time of bid submission and contract award, one of the DBEs was decertified by WMATA. Thus, the prime contractor has failed to meet the established DBE goal and did not request a waiver at the time of submission. Should the Prime Contractor be deemed to be non-responsive and the contract awarded to the next lower responsive vendor?

POLICY

The Chief Procurement Officer (CPRO) has determined that if the DBE was certified by WMATA at the time of bid submission, the Prime Contractor should not be penalized for failure to meet the established goal if the firm becomes decertified. The Prime Contractor should be given the opportunity to submit a replacement DBE vendor within five (5) days. If the DBE vendor had been decertified prior to the submission of the bid, the Prime Contractor will be deemed non-responsive and the award made to the next lower responsive vendor. A Prime Contractor is required to check the certification status of a DBE vendor prior to submission of the bid. This can be done by requesting the Small Business Programs Office (SBPO) to verify the certification status of a potential DBE subcontractor.