BEP UTILIZATION PLAN REVIEW DECISION

Agency Name: CMS

To: WAYNE ISLEY AND SUSAN HARTMA

PBC Number: 14-81775

Solicitation Title: PSD POSTS, STEEL TUBULAR - ANNUAL

Prime Contractor: DECKER SUPPLY

Subcontractor: NONE

Received Date: 12/13/13

Decision Date: 12/19/13

Prepared By: LESLIE TAYLOR

Utilization Plan deemed **RESPONSIVE**	X
Utilization Plan deemed **NON-RESPONSIVE**, for the following reason(s)	
Utilization Plan is not signed.	
Utilization Plan is not notarized.	
Utilization Plan does not contain award amount.	
Utilization Plan does not contain subcontractor amount or percentage.	
Utilization Plan does not specify the scope of work in detail.	
Utilization Plan listed vendors that have applied for BEP certification where no application currently exists.	
Utilization Plan listed BEP certified vendors that are no longer certified.	
Utilization Plan does not contain an acceptable good faith effort.	
Utilization Plan is incomplete, missing responses and/or pages.	

Comments: DECKER SUPPLY SUBMITTED A U-PLAN UTILIZING THE GOOD FAITH EFFORT. DECKER USED THE COMMODITY CODE 333630000 – POST, STEEL TO SEARCH FOR BEP VENDORS. THE VENDOR SEARCH RESULTS YEILDED FIVE VENDORS. I VERIFIED CONTACT WITH THE VENDORS. BRIDGEPORT STEEL SALES INC VERIFIED CONTACT AND THE VENDOR DID NOT RETURN THE CALL. MR. CONRAD FROM BRIDGEPORT STEEL STATED THE PARTICIPATION WOULD NOT BE COST EFFECTIVE. CHALLENGE UNLIMITED VERIFIED CONTACT FROM DECKER AND MR. BRENEGAN STATED THEY DID NOT SUPPLY THE COMMODITY. MR. DIXON FROM CUSTOM RED IRON VERIFIED CONTACT BUT DID NOT SEE THE EMAIL TIMELY BECAUSE IT WENT TO HIS SPAM MAIL. MS. HERPICH FROM GREAT LAKES METAL CORP VERIFIED THE EMAIL BUT DID NOT RESPOND BECAUSE HER COMPANY WAS BIDDING ON THE SOLICITATION. MS. MCLAIN FROM ICON DID NOT RESPOND TO MY CALL. DUE TO THE VERIFICATION OF DECKER SUPPLY'S VENDOR RESPONSES I AM DEEMING THIS U-PLAN AND GOOD FAITH EFFORT RESPONSIVE.

BEP COUNCIL WAIVER REQUEST DETERMINATION

Name of Vendor Requesting a Waiver: DECKER SUPPLY

Agency or University initiating the Procurement activity: CMS – PSD POSTS STEEL TUBULAR

Name of authorized individual making determination: LESLIE TAYLOR

30 ILCS 575/7(3) Sec. 7 Exemptions and waivers subsection (3) states: "Waivers. Where a particular contract requires a contractor to meet a goal established pursuant to this Act, the contractor shall have the right to request a waiver from such requirements." The Council or its delegate "shall grant the waiver where the contractor demonstrates that there has been made a good faith effort to comply with the goals for participation by business owned by minorities, females and persons with disabilities." CMS will review Vendor's documented efforts consistent with the factors listed in Section A, below, and may also, where applicable, consider whether the ability of other bidders to meet the contract goal suggests that good faith efforts could have resulted in Vendor meeting the goal.

The Council or its delegate has determined the waiver request is either Granted (Section A), or is Not Granted (Section B), as described below.

A. A Waiver is Granted

A waiver is hereby granted as a result of a determination that the Vendor made a good faith effort to contact BEP certified vendors to inquire as to their availability to participate as subcontractors in providing products and services under the contemplated contract.

In support of the granting of this waiver, a determination was made that vendor made good faith effort to (check all that apply):

1. Contact the Business Enterprise Bureau "prior to need and requested referrals from the certified vendor list and from any other list maintained by the Bureau. In evaluating whether Vendor has made good faith efforts in utilizing a requested certified vendor list either from the Bureau or on its own efforts, the factors below may be considered were applicable:

   X Utilize the Sell2Illinois website: www.Sell2.illinois.gov to identify BEP certified vendors. (6.1.9).

X Selecting portions of the work to be performed by BEP certified vendors in order to increase the likelihood that the goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate BEP certified vendor participation, even when the Vendor might otherwise prefer to perform these work items with its own forces. (6.1.2).

X Making a portion of the work available to BEP certified vendors and selecting those portions of the work or material needs consistent with their availability, so as to facilitate BEP certified vendor participation. (6.1.3).

☐ Negotiating in good faith with interested BEP certified vendors. Evidence of such negotiation must include the names, addresses, and telephone numbers of BEP certified vendors 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 BEP certified vendors to perform the work. A Vendor using good business judgment may consider a number of factors in negotiating with BEP certified vendors and may take a firm's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using BEP certified vendors may not be in itself sufficient reason for a Vendor's failure to meet the goal, as long as such costs are reasonable. Vendors are not required to accept higher quotes from BEP certified vendors if the price difference is excessive or unreasonable. (6.1.4).

☐ Making efforts to assist interested BEP certified vendors in obtaining lines of credit or insurance as required by the Agency/University. (6.1.6).

☐ Making efforts to assist interested BEP certified vendors in obtaining necessary equipment, supplies, materials, or related assistance or services. (6.1.7).

☐ Thoroughly investigating the capabilities of BEP certified vendors and not rejecting them as unqualified without documented reasons. The BEP certified vendor's memberships in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids and proposals in the Vendor's efforts to meet the goal. (6.1.5).

2. Advertise in the Official State Newspaper or a local newspaper. When evaluating good faith efforts in advertising for the recruitment of interested BEP certified vendors, the following factor below may be considered where applicable:

☐ Soliciting through all reasonable and available means (e.g., attendance at a vendor conference, advertising and/or written notices) the interest of BEP certified vendors that have the capability to perform the work of the contract.

The Vendor must solicit this interest within sufficient time to allow the BEP certified vendors to respond to the solicitation. The Vendor must determine with certainty if the BEP certified vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid or proposal. The Vendor must provide interested BEP certified vendors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation. (6.1.1).

3. Contact appropriate organizations such as unions, contractor associations, and MBE, FBE, or PBE oriented organizations. When evaluating good faith efforts in the use of organizations, the factors below may be considered where applicable:

   ☐ Effectively using the services of available minority/women community organizations; minority/women vendors' groups; local, state, and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of BEP certified vendors. (6.1.8).

4. Description of supporting information relied upon to make this determination:

   DECKER SUPPLY SUBMITTED A U-PLAN UTILIZING THE GOOD FAITH EFFORT. DECKER USED THE COMMODITY CODE 333630000 – POST, STEEL TO SEARCH FOR BEP VENDORS. THE VENDOR SEARCH RESULTS YEILDED FIVE VENDORS. I VERIFIED CONTACT WITH THE VENDORS. **BRIDGEPORT STEEL SALES INC** VERIFIED CONTACT AND THE VENDOR DID NOT RETURN THE CALL. MR. CONRAD FROM BRIDGEPORT STEEL STATED THE PARTICIPATION WOULD NOT BE COST EFFECTIVE. **CHALLENGE UNLIMITED** VERIFIED CONTACT FROM DECKER AND MR. BRENEGAN STATED THEY DID NOT SUPPLY THE COMMODITY. MR. DIXON FROM **CUSTOM RED IRON** VERIFIED CONTACT BUT DID NOT SEE THE EMAIL TIMELY BECAUSE IT WENT TO HIS SPAM MAIL. MS. HERPICH FROM **GREAT LAKES METAL CORP** VERIFIED THE EMAIL BUT DID NOT RESPOND BECAUSE HER COMPANY WAS BIDDING ON THE SOLICITATION. MS. MCLAIN FROM ICON DID NOT RESPOND TO MY CALL. DUE TO THE VERIFICATION OF DECKER SUPPLY'S VENDOR RESPONSES I AM DEEMING THIS U-PLAN AND GOOD FAITH EFFORT RESPONSIVE.

5. If considered, provide specific examples of other vendors meeting the contract goal and why other vendors' success in meeting the goal supports finding this Vendor made a good faith effort to meet the goal:

   Click here to enter text.

X **For the Reasons Specified in Section (A), A Waiver is Hereby Granted**

B. A Waiver is Not Granted

The Council or its delegate has determined Vendor has not "made a good faith effort to comply with the goals for participation by businesses owned by minorities, females, and persons with disabilities."

In support of the decision to not grant Vendor a waiver, a determination was made that Vendor has not made a good faith effort in the following minimum areas to warrant receiving a waiver (check all that apply):

1. Contact the Business Enterprise Bureau "prior to need and requested referrals from the certified vendor list and from any other list maintained by the Bureau. In evaluating whether Vendor has made good faith efforts in utilizing a requested certified vendor list either from the Bureau or on its own efforts, the factors below may be considered were applicable:

   Utilize the Sell2Illinois website: www.Sell2.illinois.gov to identify BEP certified vendors. (6.1.9).

   Selecting portions of the work to be performed by BEP certified vendors in order to increase the likelihood that the goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate BEP certified vendor participation, even when the Vendor might otherwise prefer to perform these work items with its own forces. (6.1.2).

   Making a portion of the work available to BEP certified vendors and selecting those portions of the work or material needs consistent with their availability, so as to facilitate BEP certified vendor participation. (6.1.3).

   Negotiating in good faith with interested BEP certified vendors. Evidence of such negotiation must include the names, addresses, and telephone numbers of BEP certified vendors 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 BEP certified vendors to perform the work. A Vendor using good business judgment may consider a number of factors in negotiating with BEP certified vendors and may take a firm's price and capabilities into consideration. The fact that there may be some additional costs involved in finding and using BEP certified vendors may not be in itself sufficient reason for a Vendor's failure to meet the goal, as long as such costs are reasonable. Vendors are not required to accept higher quotes from BEP certified vendors if the price difference is excessive or unreasonable. (6.1.4).

☐ Making efforts to assist interested BEP certified vendors in obtaining lines of credit or insurance as required by the Agency/University. (6.1.6).

☐ Making efforts to assist interested BEP certified vendors in obtaining necessary equipment, supplies, materials, or related assistance or services. (6.1.7).

Thoroughly investigating the capabilities of BEP certified vendors and not rejecting them as unqualified without documented reasons. The BEP certified vendor's memberships in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of bids and proposals in the Vendor's efforts to meet the goal. (6.1.5).

2. Advertise in the Official State Newspaper or a local newspaper. When evaluating good faith efforts in advertising for the recruitment of interested BEP certified vendors, the following factor below may be considered where applicable:

☐ Soliciting through all reasonable and available means (e.g., attendance at a vendor conference, advertising and/or written notices) the interest of BEP certified vendors that have the capability to perform the work of the contract. The Vendor must solicit this interest within sufficient time to allow the BEP certified vendors to respond to the solicitation. The Vendor must determine with certainty if the BEP certified vendors are interested by taking appropriate steps to follow up initial solicitations and encourage them to submit a bid or proposal. The Vendor must provide interested BEP certified vendors with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding promptly to the solicitation. (6.1.1).

3. Contact appropriate organizations such as unions, contractor associations, and MBE, FBE, or PBE oriented organizations. When evaluating good faith efforts in the use of organizations, the factors below may be considered where applicable:

☐ Effectively using the services of available minority/women community organizations; minority/women vendors' groups; local, state, and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of BEP certified vendors. (6.1.8).

4. Description of supporting information relied upon to make this determination:

5. If considered, provide specific examples of other vendors meeting the contract goal and why other vendors' success in meeting the goal suggests Vendor could have met the goal had good faith efforts been made:

Click here to enter text.

X **For the Reasons Specified in Section (B), A Waiver is Hereby Not Granted**

Name of authorized individual making determination: LESLIE TAYLOR

Signature of authorized individual making determination: Leslie Taylor

Date of Determination: Friday, December 20, 2013

Name of Agency Purchasing Officer this was sent to upon completion: NORMA SUTTON

Name of State Purchasing Officer this was sent to upon completion: RONALD WILSON