**Section 40.810 Good Faith Efforts and Waiver Request Procedures**

a) Vendors must make a good faith effort to meet the stated goal. A vendor that fails to meet the goal may still be awarded a contract if it can establish that it made a good faith effort to do so. CMS will determine whether a vendor has made a good faith effort to meet the goal unless that authority is delegated to the procuring agency. For contracts for construction and construction-related services entered into by a construction agency, the construction agency, if delegated that authority by CMS, will determine whether a vendor has made a good faith effort to meet the goal.

b) Vendors must submit a utilization plan with each bid or offer that demonstrates the vendor has either met or exceeded the goal or made good faith efforts toward meeting the goal. Any vendor claiming good faith relief must fully document in the utilization plan the steps taken to obtain SDVOSBs or VOSBs as subcontractors. CMS or the construction agency will consider the quality, quantity and intensity of the vendor's efforts.

c) The following is a list of types of actions that CMS or the construction agency may consider as evidence of the vendor's good faith efforts to meet the goal. Other factors or efforts brought to the attention of CMS may be relevant in appropriate cases.

1) Utilize the Sell2Illinois website (www.Sell2.illinois.gov) to identify certified SDVOSBs or VOSBs.

2) Soliciting through all reasonable and available means (e.g., attendance at a vendor conference, advertising and/or written notices) the interest of certified SDVOSBs or VOSBs that have the capability to perform the work of the contract. The Vendor must solicit this interest within sufficient time to allow certified SDVOSBs or VOSBs to respond to the solicitation. The vendor must determine with certainty if the certified SDVOSBs or VOSBs 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 certified SDVOSBs or VOSBs 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.

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

4) Making a portion of the work available to certified SDVOSBs or VOSBs and selecting those portions of the work or material needs consistent with their availability, so as to facilitate certified SDVOSBs or VOSBs participation. Availability may include considerations of how the location of the SDVOSBs or VOSBs would affect the performance or cost of the contract.

5) Negotiating in good faith with interested certified SDVOSBs or VOSBs. Evidence of such negotiation must include the names, addresses and telephone numbers of certified SDVOSBs or VOSBs 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 certified SDVOSBs or VOSBs to perform the work. A vendor using good business judgment may consider a number of factors in negotiating with certified SDVOSBs or VOSBs 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 certified SDVOSBs or VOSBs 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 certified SDVOSBs or VOSBs if the price difference is excessive or unreasonable.

6) Thoroughly investigating the capabilities of certified SDVOSBs or VOSBs and not rejecting them as unqualified without documented reasons.

7) Making efforts to assist interested certified SDVOSBs or VOSBs in obtaining lines of credit or insurance as required by the State.

8) Making efforts to assist interested certified SDVOSBs or VOSBs in obtaining necessary equipment, supplies, materials, or related assistance or services.

d) If CMS or the construction agency determines that a vendor demonstrated good faith efforts towards meeting the stated goal on a bid or offer, a waiver will be issued. If CMS or the construction agency determines that a vendor did not demonstrate good faith efforts towards meeting the goal on a bid or offer, the bid or offer may be deemed non-responsible by the CPO.

e) A vendor who obtains a State contract requiring the utilization of SDVOSBs or VOSBs, or who makes a voluntary contractual commitment to hire SDVOSBs or VOSBs, and who fails to do so is subject to having the contract canceled. If a vendor seeks a waiver of its contractual commitment to utilize or hire SDVOSBs/VOSBs, the agency must contact the SDVOSB or VOSB prior to granting the waiver to substantiate the vendor's claim. If the agency cancels the contract, the vendor may be liable for any damages the State suffers as a result of the cancellation. A vendor may not make changes to its certified SDVOSB or VOSB commitments or substitute certified SDVOSBs or VOSBs without the prior written approval of the State.

(Recodified from Section 20.810 of 44 Ill. Adm. Code 20 (Central Management Services) pursuant to Section 45-57 of the Illinois Procurement Code [30 ILCS 500/45-57], at 47 Ill. Reg. 12484)