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MWBE Compliance on Professional Services/Goods/ Non-Professional Services Contracts

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Overview of Presentation



- I. City's Minority, Women & Small Business Enterprise Program**
- II. Pre-Award Good Faith Efforts Requirements**
- III. OBO's Assessment of Pre-Award Efforts**
- IV. Post-Award Good Faith Efforts Assessments**
- V. OBO's Assessment of Post-Award Efforts**





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City's Minority, Women and Small Business Enterprise Program



City of Houston's Minority, Women and Small Business Enterprise Program



- Governed by City's Code of Ordinances, Chapter 15, Article V – Minority, Women and Small Business Enterprises (MWSBE).
- Express purpose is to promote the growth and success of MWSBEs.
- City places goals on contracts as a way to increase participation of MWSBEs:
 - *Goal-Oriented Contracts*
 - *Regulated Contracts*
- Contract goals are based on divisibility of the work required under the contract and the availability of certified MWSBEs to perform the work.
- Goals are not quotas. The standard for meeting goals is demonstrating and documenting good faith efforts.



Citywide Aspirational Goals

- **Professional Services contracts**– require a professional license (e.g. Architect, Engineer, Attorney, Accountant, Consultant, etc.). **MWBE goal = 24%**
- **Purchasing contracts**– provide the supply of goods and non-professional services. **MWBE goal = 11%**
- **Contract-Specific Goals** –All departments are encouraged to not default to citywide aspirational goals but to instead work with OBO to establish contract-specific and/or categorical goals.



What are Good Faith Efforts?



- Good Faith Efforts is the standard of review applied to determine a Bidder/Proposer's MWBE goal compliance.
- Good Faith Efforts are steps taken to achieve a Contract Goal.
- Good Faith Efforts must be demonstrated by a successful Bidder/Proposer **PRIOR** to the award.
- If a Bidder/Proposer anticipates it cannot or will not meet the advertised contract goal prior to the award, a Good Faith Effort demonstration is **REQUIRED** prior to contract award.
- Good Faith Efforts Policy can be found on OBO's website at www.houstontx.gov/obo.



Pre-Award Good Faith Efforts



- Vendor must submit a compliant plan at the time of submission.
- If the proposed MWBE utilization is less than the advertised contract goal, the vendor must submit documentation illustrating their good faith efforts.
- OBO will assess their submission including any supporting documentation to determine whether the vendor has made the requisite good faith efforts.
- OBO applies the City written Good Faith Efforts Policy in determining whether they have demonstrated a genuine effort to comply with the advertised contract goal.
- For Professional Services/Goods/Non-Professional Services Contracts only, vendor may submit a revised compliant plan, if the original plan was evaluated and denied.



Pre-Award Good Faith Efforts Flow





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Solicitation Documents



Solicitation Documents



MWBE participation requirements are set forth within the solicitation package, which includes an Exhibit (**Schedule of MWBE Participation**) for the Bidder/Proposer to demonstrate MWBE participation.

EXHIBIT ____
ATTACHMENT ____
SCHEDULE OF MWBE PARTICIPATION

Date of Report:	
Bid Number:	
Formal Bid Title:	

Name of Certified MWBE Subcontractor	Street Address, City, State, Zip Code, Tel # & Email	Certification Type for Goal MBE, WBE	NAICS Code (6 Digits)	Description of Work (Scope of Work)	Agreed Price

TOTAL	\$
MWBE PARTICIPATION AMOUNT	\$
TOTAL BID AMOUNT	\$



Solicitation Documents



MWBE participation requirements are set forth within the solicitation package, which includes an Exhibit (**MWBE Participation Plan, Good Faith Efforts**) for the Bidder/Proposer to demonstrate MWBE participation.

**MWBE PARTICIPATION PLAN
GOOD FAITH EFFORTS**

If you have exhausted your best efforts to execute the City's MWBE Policy by seeking subcontracts and supply agreements with certified minority and women business enterprises, yet failed to meet the stated percentage goal of this bid document, list below your good faith efforts to demonstrate compliance. For more information, please review the Good Faith Efforts Policy, which can be found on the OBO website at www.houstontx.gov/obo.

** All firms listed above must be certified by the Office of Business Opportunity. This schedule of MWBE participation should be returned with the bid form.

The undersigned will enter into a formal agreement with the MWBE and suppliers listed in this schedule, upon award of a contract from the City.

Bidder Company Name

Signature of Authorized Officer/Agent/Bidder & Title

Print or Typed Name of Authorized Officer/Agent/Bidder & Title

Date





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Pre-Award Good Faith Efforts



Written Good Faith Efforts Policy: Pre-Award Highlights



Attend Pre-Proposal Meetings

- OBO will request copy of the sign –in sheet from the Contracting Department

Outreach and Advertisement

- Contact organizations & associations no less than 10 days prior to solicitation due date.

Access and Point-of-Contact

- Appoint knowledgeable liaison in your company to answer questions regarding project.

Notice and Solicitation

- Provide a reasonable number of MWBEs with written notice via email, mail etc.

Contracts and Negotiations

- Enter a contract (Letter of Intent) with interested MWBEs.

New Efforts

- Bidder/Proposer must demonstrate new efforts not attempted on previous bids

City may consider other factors or types of relevant efforts in appropriate cases, as documented by Contractor.

Companion Guide to GFE Policy can be found at [http://www. Houston tx.gov/obo](http://www.Houstontx.gov/obo)

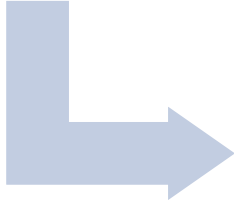


Requirements for GFE Submission to City



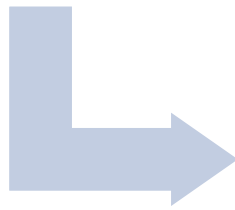
Letter from Vendor

- Letter should be on vendor's letterhead and include reason why vendor is unable to meet advertised goal.



Supporting Documentation

- Include supporting documentation that will demonstrate GFE.
- Ex: Spreadsheets, phone logs, emails.



Submit GFE

- Submit GFE requests & supporting documents to the City Contracting Department or directly to OBO.





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Case Studies



Summary of Pre-Award GFE Assessment



EVALUATE

- GFEs are evaluated on a case-by-case basis in making a determination whether a Vendor is in compliance with the City's Good Faith Effort Policy for goal attainment.

REVIEW

- OBO reviews all documents provided by Vendor and Contracting Departments in making a GFE determination.

DECISION & NOTIFICATION

- OBO will render a written decision, via email, to the Vendor and the Contracting Department.
- If denied, Vendor has additional opportunities to submit a compliant plan or another GFE request.
- Once approved, Contracting Department may move forward in the procurement process.



Approved Good Faith Efforts



Approved Good Faith Efforts usually consist of:

- Completed Documents
- Evidence of Good Faith Efforts
- Supporting Documents



Case Study 1 – Approved Good Faith Efforts



A Library Collection & Recovery Service project with a 24% Advertised Goals.

- **Proposer provided the following documentation for evaluation:**
 - ❑ Proposer’s explanation of Good Faith Efforts (On Proposer’s Letterhead) outlining why they could no meet the advertised goal.
 - ❑ Schedule of MWBE Participation (Exhibit II – Attachment A).
 - ❑ Supporting documentation (letters and emails to certified firms).
 - ❑ Email from Proposer outlining outreach to law firms and printing/office supply firms:
 - Thirty-two letters (32) were sent out to certified legal firms and printing firms
 - Identified a few work elements within the Scope of Work for MWBE participation
 - Outreach to MWBE’s work capabilities & relevant scope of work
 - Results of contact with MWBEs



Case Study 1 – Approved Good Faith Efforts



 **Department Services evaluated documentation and verified details**

Proposer demonstrated Good Faith Efforts by providing documentation, which are as follows:

- Identified and designated portions of the work to be performed by MWBEs to increase the likelihood of meeting the contract goals by encouraging proposals in various scopes of work.
- Notified a reasonable number of certified MWBEs.
- Followed up to determine if they were interested in submitting a proposal.
- Solicited MWBEs within a reasonable amount of time by providing written notification to MWBEs more than 7 business days before bid submission.



Denied Good Faith Efforts



Denied Good Faith Efforts usually consist of:

- Incomplete Documents
- Little or no evidence of Good Faith Efforts
- No supporting documents



Case Study 2 – Denied Good Faith Efforts



A **Vehicle Bodies and Accessories for cab and chassis** project with a **11%** MWBE Advertised Contract Goal.

- **Proposer provided the following documentation for evaluation:**
 - Proposer’s explanation of Good Faith Efforts (On Proposer’s Letterhead) outlining why they could no meet the advertised goal.
 - Schedule of MWBE Participation solely listing company names.
 - Supporting documentation of certified vendors contacted (Excel spreadsheet).



Case Study 2 – Denied Good Faith Efforts



Department Services evaluated documentation and verified details provided by Proposer

Proposer did not demonstrated a **genuine effort** to comply with the City's Good Faith Efforts Policy:

- Bidder did not provide documentation of work items solicited to MWBEs
- Bidder used firms that were not certified in areas relevant to the scope of work.
- Bidder did not explore opportunities in other areas in an effort to meet the advertised contract goal.
- Bidder did not attend pre-proposal meeting.





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Post-Award Good Faith Efforts



Post-Award Good Faith Efforts



Good Faith Efforts are steps taken to achieve a Contract Goal which, by their scope, intensity and usefulness, demonstrates ...**the contractor's responsibility to put forth measures to meet or exceed the Contract Goal throughout the duration of the contract.**

- If the Prime fails to achieve the MWBE goal or fails to use all of the approved goal credit subcontractors on their Participation Plan, the Prime must demonstrate that their failure to do so was based on circumstances that they could not reasonably control.
- For a Pre-Award GFE, the City's written *Good Faith Efforts Policy* outlines those factors that will be considered in the assessment of good faith efforts **at the end of the contract.**





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Documenting Good Faith Efforts



Documenting Good Faith Efforts



- Submit in writing all efforts made to comply with the goal.
- Execute and submit required subcontracting agreements outlining terms of engagement.
- Keep a log of efforts made throughout the course of contract to meet goal.
- Contact OBO for assistance if you are experiencing challenges meeting the goal.
- When possible, provide Sub-Consultants/Subcontractors with advance notice when they will be needed for project.
- Document opportunities that exist with all additional work and your efforts to solicit MWBEs.



Documenting Good Faith Efforts Cont'd.



- Designate an MWBE liaison officer.
- Provide up-to-date MWBE Utilization Schedules and promptly report payments to the B2G Now system.
- Genuinely attempt to resolve disputes with MWBEs.
- Utilize all MWBEs on the approved participation plan unless a deviation is approved.
- Request a deviation when needed and make good faith efforts to replace MWBE firms with other MWBE firms.
- Promptly respond to inquiries from the City regarding MWBE participation for goal credit.



Documenting Good Faith Efforts Cont'd.



- When performing outreach to MWBEs, document MWBEs you contact and their responses.
- After contract has been awarded, look for other MWBEs to perform and request that their dollars be added for credit as backup.
- Ask your MWBEs whether they will execute their work utilizing other Sub-Consultants/Subcontractors/suppliers.
- If Sub-Consultants/Subcontractors will not meet requirement for full credit, find out up front how much credit their work will result in.
- Make sure MWBE firms are performing a **Commercially Useful Function.**



Documenting Good Faith Efforts Cont'd.



- Provide information that is factually accurate and free of material misrepresentation.
- Attend all meetings and mediations requested by the City.
- Notify OBO of the effect of scope of work changes on Participation Plan.

*****City may consider other factors or types of relevant efforts in appropriate cases, as documented by Contractor.***





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Commercially Useful Function: A core element of goal credit



Commercially Useful Function (CUF)



An MWBE performs a commercially useful function (CUF) when it is responsible for a discrete task or group of tasks required in the contract using its own forces or by actively supervising on-site the execution of tasks. An MWBE has to be certified in the NAICS code in which they are performing.

- Prime Contractors only get goal credit when an MWBE performs a commercially useful function.
- Do not confuse commercially useful function with certification.
- A CUF audit seeks to determine the appropriate credit for work performed by listed MWBE as well as reduce fraud.



Goal Credit for Sub-Consultants/Subcontractors



Full credit

- MWBEs that perform work they are certified for by the City; and
- MWBEs that perform work with their own staff or subcontract portions of their work to other MWBEs.

Partial credit

- Partial credit will equal money retained by the goal credit Sub-consultants/subcontractors.
- MWBEs who use lower tiered non-certified firms to do the work will result in a reduction of credit to Prime.
- Prime will only receive credit for money retained by MWBE.

No Credit

- Firms not certified with the City of Houston.
- MWBEs working outside of their certification NAICS Code.





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MWBE Utilization Schedules & Participation Plan Deviations



MWBE Utilization Schedule



MWBE Utilization Schedule is a forecast of the Prime's use of certified MWBE firms to meet the MWBE goal on projects.

- The schedule must be submitted before contractor starts work and upon request.
- An updated copy of the Utilization Schedule is also required when responding to a "Not Meeting the Goal" letter.

Challenges with relying on MWBE Utilization Schedule for work orders – documentation of your efforts is important to final determination of whether you made GFE:

- Scope of Work not fully defined
- Time Constraints/Emergency
- Multiple contracts awarded for the same type of service
- Work orders may not be consistent



MWBE Utilization Schedule



MWSDBE Utilization Schedule



Status as of: Feb-17
Project Name: Brittmore Road Paving & Drainage Design
WBS Number: N-000697-0001-3
Company Name: Right Way Engineering, Inc

Month	Total	Jones Surveying	J C Brown, Inc.	Gray & Associates,	Griggs Engineering
Oct-16	\$41,000	\$4,000	\$12,000	\$15,000	\$10,000
Nov-16	\$35,000	\$15,000	\$8,000	\$8,000	\$4,000
Dec-16	\$31,000	\$8,000	\$9,000	\$8,000	\$6,000
Jan-17	\$16,000	\$0	\$4,000	\$7,000	\$5,000
Feb-17	\$23,000	\$3,000	\$8,000	\$8,000	\$4,000
Mar-17	\$26,500	\$2,500	\$8,000	\$12,000	\$4,000
Apr-17	\$29,500	\$1,500	\$12,000	\$12,000	\$4,000
May-17	\$16,000	\$0	\$0	\$12,000	\$4,000
Jun-17	\$3,000	\$0	\$0	\$0	\$3,000
Jul-17	\$3,000	\$0	\$0	\$0	\$3,000
Aug-17	\$3,000	\$0	\$0	\$0	\$3,000
Sep-17	\$3,000	\$0	\$0	\$0	\$3,000
Oct-17	\$0	\$0	\$0	\$0	\$0
Nov-17	\$0	\$0	\$0	\$0	\$0
Dec-17	\$0	\$0	\$0	\$0	\$0
Jan-18	\$0	\$0	\$0	\$0	\$0
Feb-18	\$11,000	\$1,000	\$10,000	\$0	\$0
Mar-18	\$0	\$0	\$0	\$0	\$0
Apr-18	\$0	\$0	\$0	\$0	\$0
(continue adding months)	\$0	\$0	\$0	\$0	\$0
\$	\$241,000	\$35,000	\$71,000	\$82,000	\$53,000
%	24.10%	3.50%	7.10%	8.20%	5.30%



Deviation Requests



- Work designated in the Prime's approved MWBE participation plan cannot be completed by any other subcontractor, supplier or the Prime unless approved by OBO first.
- City has enhanced its deviation policy for *locally funded projects*- similar to the process required on U.S. Department of Transportation contracts.
- If Prime needs to make any changes to the participation plan by **adding, removing or substantially reducing (more than 50%) participation** of an MWBE, Prime **must** first submit a written deviation request.



Deviation: Removal or Reduced Participation



Prime's Responsibility

- Before submitting the deviation request, Prime must give written notice to affected MWBE of its intent to request **removal** or **substantially reduce participation**.
- Prime must provide MWBE with specific reason(s)
 - Reason(s) must constitute “**good cause**”:
 - Unable to execute an agreement after award.
 - Subcontractor unable to perform.
 - The listed subcontractor is ineligible to receive credit for the type of work required.
 - The listed subcontractor is ineligible to work because of suspensions or debarment.
 - The subcontractor voluntarily withdraws.



Deviation: Removal or Reduced Participation Cont'd.

- Prime must give MWBE five (5) business days to respond to the written notice.
- Prime must submit to OBO:
 - Copy of the notice to the affected MWBE along with any objections by the affected MWBE.
 - Reason why Prime's request should be approved despite the objection, if any.
 - Copy of a completed online *Deviation Request* form including information about Prime's plan to meet the approved MWBE participation plan if removal or reduction is approved.



Deviation: Removal or Reduced Participation Cont'd.

OBO's Review

- OBO will confirm MWBE's consent or refusal.
- If MWBE does not consent to being removed, OBO will initiate mediation between the Prime and the MWBE to attempt a resolution.
- If parties fail to reach a resolution after mediation, OBO will make a reasonable determination based on all the information provided by the parties, including information provided by contracting department regarding any relevant technical project issues.
- OBO will provide a written final determination to Prime, affected MWBE and the contracting department.



Deviation: Addition




- Prime must submit a completed online *Deviation Request* form when requesting to add an MWBE for goal credit to the existing approved participation plan.
- Within 14 business days of the date of OBO's approval letter, the Prime must provide OBO with a copy of the executed subcontracting agreement or purchase order agreement with the new MWBE.
- Prime must also provide an updated *MWBE Utilization Schedule*, if applicable.




Deviation Requests Form



This form can be found at www.houstontx.gov/obo. Click on "Forms and Documents."



City of Houston
Office of Business Opportunity
DEVIATION REQUEST



To: The Office of Business Opportunity (OBO) Director

Date: _____

Prime Contractor: _____

Project Description: _____

Contract Number: _____

COH Project Manager: _____

OBO Compliance Officer: _____

Submitted By (Name and Title): _____

Company Mailing Address: _____

City: _____ State: _____ Zip code: _____

Contact Phone Number: _____

Name of MWSBE Requested to Add	Name of MWSBE Requested to Delete

List subcontractors below that will be used as supplier or manufacturer on this contract.
(Please note that no more than 50% of the MWSBE goal can be satisfied using suppliers).

Summarize why you are requesting a change to your MWSBE participation plan.

What work will the proposed goal credit participant(s) be performing and the estimated payment to each of them?

Will the proposed goal credit participant(s) be performing work already assigned to another goal credit participant? Yes No

If so, please list the goal credit participant(s) that were assigned the work originally.

When will the proposed goal credit participant(s) start working and have you executed a subcontracting agreement with them? (A Copy of the executed agreement must be provided to OBO within 14 days of approval of the deviation request).

Signature: _____
 Email to: morris.scott2@houstontx.gov

THIS FORM IS NOT TO BE USED FOR FEDERALLY FUNDED CONTRACTS





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Failure to make Post-Award Good Faith Efforts



Failure to Make GFE: Common Observations



- Failure to respond to City inquiries (letters, emails, calls) regarding MWBE utilization.
- Failure to execute required subcontracting agreements outlining terms of engagement.
- Listing MWBEs for goal credit without notifying them.
- Failure to submit deviation request for a change in MWBE Participation Plan.
- Failure to fully report payments made to MWBEs.
- Failure to request credit for other MWBEs used.



Failure to Make GFE: Common Observations Cont'd.

- Self performing work intended for MWBEs, without OBO approval.
- Failure to understand how MWBEs will perform on the contract (no Commercially Useful Function or partial goal credit work).
- Failure to notify MWBEs and OBO promptly of any challenges that will affect MWBE utilization.
- Failure to look for goal credit opportunities on additional work authorized.
- Failure to document changes that affect goal credit MWBEs.





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Final Post-Award GFE Assessment



Assessment of Post-Award Good Faith Efforts



- Contractor's efforts to meet MWBE contract goal(s) are assessed at the end of the project.
- Good Faith Efforts begins when the project is awarded, so start documenting the things you did and submit all relevant documentation of your efforts to OBO by the end of the contract.
- Not making sufficient good faith effort to meet the goal may affect whether the department adds more money to the current contract or awards future contracts to your company.
- Failure to make good faith efforts will result in an "unsatisfactory" compliance rating.
- Unsatisfactory ratings may impact award of future projects if a sanction is imposed.



Ratings For MWBE Goal Compliance



- **Outstanding**
 - Exceeded Goal and Made Good Faith Efforts to Utilize Listed MWBEs.
- **Satisfactory**
 - Met Listed Goal and Made Good Faith Efforts to Utilize Listed MWBEs.
 - Exceeded Goal but failed to make Good Faith Efforts to Utilize Listed MWBEs.
- **Unsatisfactory**
 - Failed to make Good Faith Efforts.





Questions

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Thank You

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