Metro Nashville and Davidson County

Equal Business Opportunity Program
Good Faith Efforts
Overview of Presentation

I. Purpose
II. Discussion of Good Faith Efforts
III. BAO’s Assessment of M/WBE Utilization
IV. Samples of Approved & Denied GFEs
V. Appealing a Final Determination
Metro’s EBO Program

- Governed by an ordinance amending Title 4 of the Metropolitan Code to expand and update the existing procurement nondiscrimination program, originally established by legislation in 2008. Bill BL2018-1419
- Purpose is to promote full and equal business opportunities for all persons doing business with the Metropolitan Government by increasing the purchase of goods and services from minority-owned and women-owned businesses.
- Metro establishes subcontracting goals on contracts as a way to increase participation of M/WBEs.
- Contract goals are based on divisibility of the work required in the solicitation and the relevant market availability of certified M/WBEs to perform the work.
- Goals are not quotas. The standard for compliance is meeting the established goals and demonstrating and documenting Good Faith Efforts.
What are Good Faith Efforts?

Means the voluntary actions of a Participant undertaken in good faith to ensure that it does not discriminate in its contracting practices and to explain any failure to meet either an Annual Aspirational Goal or a contract/project Goal set in accordance with this legislation.
Good Faith Efforts: Pre-Award

Elements include:

- Attendance at pre-offer meeting
- Outreach and Advertisement
- Access and Point-of-Contact
- Notice and Solicitation
- Work Designations and Explanations

This is not a complete list.

Metro may consider other factors or types of relevant efforts in appropriate cases.
Good Faith Efforts

Good Faith Efforts are a **REQUIREMENT** to be demonstrated by a successful bidder/offeree on a goal oriented contract.

If the submitted M/WBE subcontracting participation is less than the advertised contract goal(s), the bidder/offeree **MUST** submit Good Faith Effort Summary Sheets demonstrating their Good Faith Efforts with their bid.

Evidence of a genuine attempt to meet the contract goal!
Tips to Increase M/WBE Goal Attainment

- Use Metro and B2GNow’s M/WBE Directory to find firms
- Establish relationships with M/WBEs in advance
- Go back to subcontractors that you’ve done business with in the past and ask them to bid
- Advertise opportunities
- Directly solicit to M/WBEs in a timely manner
- Subdivide the work
- Provide relevant bidding/contract information to M/WBE firms
Attendance

- Attend pre-bid/pre-proposal meetings. If necessary, use meeting as an opportunity to voice any concerns about contract goal(s).

- Build Relationships

- Clarity on technical & procurement aspects of the solicitation
Follow up

Follow-up with M/WBEs attending the pre-bid/pre-proposal meetings to discuss subcontracting opportunities. Contact M/WBEs in Metro’s and the B2GNow online directory.
Outreach

- Conduct outreach with minority and women based organizations before solicitation due date.

- Tri-State Minority Supplier Development Council
- Black and Hispanic Chamber of Commerce
- National Association of Women Business Owners (NAWBO)
Dividing the Contract

Identify and designate work to be performed by M/WBEs that increase likelihood of meeting goal.

Who is supplying the building material?

Who is pouring the concrete?
Sufficient Information About Contract

- A knowledgeable point of contact available to M/WBEs. Provide contact’s name, telephone, e-mail, office address.

- Provide interested M/WBEs access to plans, scope of work, and requirements of contract.
Notice and Solicitation

- Provide M/WBEs with written notice via e-mail, certified mail, fax or other documented contact regarding subcontracting opportunities.

- Solicit M/WBEs no less than **7 business days** before offer submission.

- Follow up with M/WBEs to determine interest in bidding.
Negotiate in good faith with interested M/WBEs, and not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
Explanation

Providing a written explanation for rejection of any potential subcontractor or vendor to the bidder, including the name of the firm awarded the subcontract or supply agreement.
Assistance

- Providing reasonable assistance to M/WBEs in need of equipment, supplies, bonding, letters of credit and/or insurance.
  - Avoid unnecessary insurance
  - Avoid coupling bid bonds with retainage
- Providing reasonable technical assistance
M/WBE Forms
M/WBE Utilization & Schedule Forms

- Captures the M/WBE participation that the bidder/offeror commits to achieve for the contract.
- Helps BAO determine whether the bidder/offeror has a plan to actually meet the goal.
- The M/WBE Utilization form is submitted at the time of bid.
M/WBE Utilization Form

### Statement of M/WBE Utilization

<table>
<thead>
<tr>
<th>MBE/WBE Firm Name</th>
<th>MBE/WBE Firm Address</th>
<th>Phone/E-Mail</th>
<th>Certificate Type</th>
<th>Group Type</th>
<th>Code UNSP/NAICS</th>
<th>Description of Work</th>
<th>MBE/WBE Dollars ($)</th>
<th>Percent of Total Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td>Select</td>
<td>Select</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

TOTAL

I am the duly authorized representative and certify the facts and representations contained in this form and supporting documents are true and correct.

Authorized Representative (Printed Name/Title/Signature) __________________________

Date __________

**Note:** M/WBE is defined as a business entity maintaining a significant business presence in the Program Area & performing a commercial useful function that is owned by one or more of the following: (1) African Americans; (2) Native Americans; (3) Hispanic Americans; (4) Asian Americans; and (5) Other Female.

**For Internal Office Use ONLY**

Has Prime Complied with EBO Goal?

If No, Good Faith Efforts Met?

<table>
<thead>
<tr>
<th>BAO Representative:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total MBE Subcontracting</td>
<td>%</td>
</tr>
<tr>
<td>Total WBE Subcontracting</td>
<td>%</td>
</tr>
<tr>
<td>Total MBE/WBE Participation</td>
<td>%</td>
</tr>
</tbody>
</table>

John Cooper, Mayor

EBO
# M/WBE Utilization Schedule Form

<table>
<thead>
<tr>
<th>Month</th>
<th>Total</th>
<th>Frye Surveying</th>
<th>JR Shire, Inc.</th>
<th>Carr &amp; Associates</th>
<th>Burt Engineering</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan-20</td>
<td>$31,000</td>
<td>$8,000</td>
<td>$9,000</td>
<td>$8,000</td>
<td>$6,000</td>
</tr>
<tr>
<td>Feb-20</td>
<td>$29,500</td>
<td>$1,500</td>
<td>$12,000</td>
<td>$12,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Mar-20</td>
<td>$41,000</td>
<td>$4,000</td>
<td>$12,000</td>
<td>$15,000</td>
<td>$10,000</td>
</tr>
<tr>
<td>Apr-20</td>
<td>$23,000</td>
<td>$3,000</td>
<td>$8,000</td>
<td>$8,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>May-20</td>
<td>$35,000</td>
<td>$15,000</td>
<td>$8,000</td>
<td>$8,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Jun-20</td>
<td>$16,000</td>
<td>$0</td>
<td>$0</td>
<td>$12,000</td>
<td>$4,000</td>
</tr>
<tr>
<td>Jul-20</td>
<td>$3,000</td>
<td>$0</td>
<td>$0</td>
<td>$0</td>
<td>$3,000</td>
</tr>
</tbody>
</table>

Total Dollar Value: $178,500

Total %: 100% 17.64% 27.45% 35.29% 19.60%
Assessing Your Utilization
Achievement of the M/WBE Goals

- MBE and WBE goals are **separate subcontracting** goals to be met individually.

- Any **excess** of the MBE or WBE Goal **can not** be used to meet a deficient MBE or WBE goal.

- The total dollar value of the contract may be counted toward the specified goal when the Prime Contractor demonstrates a commercially useful function(s) for each proposed Subcontractor. This includes the fees and commissions charged for professional services, legal counsel, manufactures, financial consultants, and insurance agents.

- The actual portion of MBE or WBE participation in a joint venture is counted toward the goal.
M/WBE Directory

Only Metro approved certified firms may be used to meet the MBE or WBE goal.


Search the Metropolitan Government of Nashville & Davidson County Directories by entering search criteria and clicking Search. You must select at least one certification type. You can also search by a variety of other fields which are listed below.

Search results may be downloaded by clicking the “Download Search Results” button after your search results are displayed. To download the full Certification Directory do not enter search criteria, scroll to the bottom of the page and click the “Download Entire Directory” button.

Important
- The DBE/SBE directory is solely for the purpose of identifying those DBE/SBEs that are certified in the State of Tennessee. It is not intended to represent a listing of DBE/SBEs deemed eligible to participate on contracts, or to indicate that such DBE/SBEs satisfy any requirements which may affect DBE/SBEs ability to work on contracts.
- Please note that in accordance with 49 CFR Part §26.73 the issue of whether a firm performs a Commercially Useful Function (CUF) is not reviewed at the time of certification. DBE firms must be certified with the appropriate NAICS and description. In order for the prime to receive credit for DBE participation toward the assigned contract goal, the DBE must be performing a CUF in accordance with 49 CFR Part §26.55.

A ‘Search by Commodity Code’ is provided below, and you may include commodity codes in a download of your search results.

<table>
<thead>
<tr>
<th>Search by Certification Type</th>
<th>Certifications</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>☑ Disadvantaged Business Enterprise (DBE)</td>
</tr>
<tr>
<td></td>
<td>☑ LGBT Business Enterprise (LGBTBE)</td>
</tr>
<tr>
<td></td>
<td>☑ Minority Business Enterprise (MBE)</td>
</tr>
<tr>
<td></td>
<td>☑ Service-Disabled Veteran Business Enterprise (SDVBE)</td>
</tr>
<tr>
<td></td>
<td>☑ Small Business Enterprise (SBE)</td>
</tr>
<tr>
<td></td>
<td>☑ Women Business Enterprise (WBE)</td>
</tr>
</tbody>
</table>
Counting M/WBE Goal Credit
Calculating Participation – Project 1

Goals: 15% MBE and 10% WBE

These are separate goals to be met individually!

Bidder’s Proposed Participation Plan:
- MBE: 20%
- WBE: 10%

Does this plan meet the Goals?
YES

EBO
Calculating Participation – Project 2

Goals: 25% MBE and 15% WBE

These are separate goals to be met individually!

Bidder’s Proposed Participation Plan:

- MBE: 20%
- WBE: 20%
  - Only the WBE Goal is met.
  - The overage in WBE CAN NOT be used for MBE goal calculation.

Does this plan meet the Goals?

NO

EBO
When do you demonstrate Good Faith Efforts?
BAO’s Review of Good Faith Efforts

If the bidder/offeror’s utilization provides for M/WBE participation less than the Contract Goal, offer must also submit:

- Good Faith Efforts Summary Sheets

Good Faith Efforts Summary Sheets are evaluated when a first ranked bidder **FAILS** to meet the established M/WBE subcontracting participation goal.

- BAO staff reviews all documents provided by the bidder/offeror with bid submission in making a Good Faith Efforts determination.

- Offers will be contacted by BAO **only** for clarification purposes, when necessary.
Good Faith Efforts Summary Sheets

- Allows the bidder/offeror to document Good Faith Efforts to meet its M/WBE goal.
- Allows BAO to see how much effort the bidder/offeror put into finding M/WBE firms.
- Bidder/offeror must fill out every box.
- Bidder/offeror must sign document.
Evaluation and Assessment of GFE
Evaluation and Assessment

GFE are evaluated by the BAO on a case-by-case basis in making determination whether a bidder or contractor is in compliance with this program.

- Efforts employed by a bidder or contractor should be those that one could reasonably expect a bidder or contractor to make if bidder were actively and aggressively attempting to obtain M/WBE participation to meet the contract goal.

- A bidder/offeror's Good Faith Efforts must be demonstrated at bid submission

- Additional supporting documents or justifications cannot be submitted to the BAO for review or consideration after submission of bid.

- Contractors will be contacted by the BAO only for clarification purposes on a case-by-case basis.
Approved GFE

Approved Good Faith Efforts usually will consist of:

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

John Cooper, Mayor

EBO
Sample 1 – Approved Good Faith Efforts

A Building Renovation project with an advertised M/WBE Goal 15% MBE & 5% WBE

- Prime’s Offer: 10% MBE, 5% WBE
- Prime failed to meet the MBE goal by 5%. Prime meet the WBE goal of 5%
- **Prime provided the following documentation with their bid for evaluation:**
  - Statement of Interested
  - Statement of Bid/Price Quotations
  - Statement of M/WBE Utilization
  - Good Faith Summary Sheets with documentation of the following:
    - M/WBEs contacted and contact details
    - Dates of contact for fax/email notification and telephone call follow-ups
    - Results of contact with M/WBEs
    - Identified several work elements within the Scope of Work
    - M/WBEs work capabilities & relevant Scope of Work
    - Confirmation of advertisement with diverse chambers or publications
Vendor demonstrated Good Faith Efforts by providing documentation, which are as follows:

- Attended pre-offer meeting
- Identified and designated portions of the work to be performed by MWBEs to increase the likelihood of meeting the contract goals by soliciting bids in various scopes.
- Notified a reasonable number of certified MWBEs.
- Solicited MWBEs within a reasonable amount of time by providing written notification to MWBEs more than 7 business days before bid submission.
- Provided documentation of advertisement
Failed GFE

Bidders cannot demonstrate good faith efforts merely by stating any of the following:

- Not enough divisibility
- Contractor self-performing the work
- Not enough low M/WBE bids
- Running out of time
- Specialty nature of work

It is important to address Goal challenges at Metro’s Pre-offer/Pre-proposal meetings and follow up with online discussion questions.
A Building Renovation project with an advertised M/WBE Goal 20% MBE & 15% WBE

- Prime’s Offer: **10% MBE, 5% WBE**
- Prime failed to meet the MBE goal by 10%. Prime failed to meet the WBE goal by 10%
- **Prime provided the following documentation with their bid for evaluation:**
  - Statement of Interested
  - Statement of Bid/Price Quotations
  - Statement of M/WBE Utilization
  - Good Faith Summary Sheets with documentation of the following:
    - No Content; bidder/offeror only signed and dated the form.
    - Justification: bidder/offeror indicated that they will be self-performing most scopes of work. Offer stated the MBE & WBE quotes received for the remaining scopes did not meet the contract goals. bidder/offeror stated if awarded the contract, they will continue to search for M/WBE subcontractors and vendors to perform larger scopes of work.
    - Good Faith Efforts Summary Sheets: bidder/offeror indicated that the scopes of work are subdivided by UNSPSC Code to increase scopes and participation. bidder/offeror indicated that large scopes of work were evaluated for joint venture and possible partnership as well multiple participation from suppliers and subcontractors. Offer indicated that request for quote was posted on line and sent email.
Sample 2 – Failed Good Faith Efforts

Business Assistance Office evaluated documentation and verified details provided by the bidder/offeror.

bidder/offeror did not demonstrate a genuine effort to comply with Metro’s Equal Business Opportunity Program Good Faith Efforts:

- bidder/offeror’s bid totaling **10% MBE** and **5% WBE** did not demonstrate a genuine effort
- bidder/offeror did not attend the pre-offer meeting to connect with potential M/WBE subcontractors
- Offer did not submit any additional information illustrating outreach to certified firms and follow-ups with those firms in an effort to meet the goals
- bidder/offeror indicated that they would self-perform a majority of the work despite Metro identifying **20% MBE** and **15% WBE** of the work for subcontracting.