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MWSBE Compliance on Construction Contracts

Presented by:

MARSHA E. MURRAY, *Deputy Director*

BARBARA FISHER & TIFNEY SCOTT

Procurement Specialists, OBO Department Services

MORRIS SCOTT

Division Manager, OBO Contract Compliance Division

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Sylvester Turner
Mayor

Carlecia D. Wright
Director

611 Walker, 7th Floor
Houston, TX 77002
www.houstontx.gov/obo

T. 832.393.0600 F. 832.393.0647



Overview of Presentation



- I. Program Overview**
- II. Pre-Award Good Faith Efforts Requirements**
- III. Assessing Pre-Award Good Faith Efforts & Appeals Process**
- IV. Post-Award Good Faith Efforts Requirements**
- V. Final Contract Ratings**



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

- Governed by City of Houston Code of Ordinances, Chapter 15, Article V
- Express purpose is to promote the growth and success of MWSBEs
- City places goals on contracts as a way to increase participation of MWSBEs
- Contract goals are based on divisibility of the work required under the contract and the availability of certified MWSBEs to perform the work.
- Citywide aspirational goal of 34% on construction projects.
- Goals are not quotas. The standard for meeting goals is demonstrating and documenting good faith efforts.



What are Good Faith Efforts?



- “Good Faith Efforts are steps taken to achieve a Contract Goal which, by their scope, intensity and usefulness, demonstrates the bidder’s responsiveness to fulfill the business opportunity objective when bidding on a contract as well as the contractor’s responsibility to put forth measures to meet or exceed the Contract Goal throughout the duration of the contract.”
- **EVIDENCE of a genuine attempt to meet Contract Goals.**
- Good Faith Efforts must be demonstrated by a successful Bidder on goal oriented contracts **PRIOR** to the award and by a Contractor **DURING** the contract.
- Policy can be found on OBO’s website at www.houstontx.gov/obo





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Solicitation Documents



Construction Documents



Contractors are informed of the MWSBE Program requirements using the following:

Document 800: *Supplementary Conditions*

- Lists the MBE & WBE Goals
- Outlines goal requirements related to use of MWSBE suppliers and use of SBEs to meet goals
 - MWSBE supplier participation may account for no more than 50% of the MWSBE Participation Plan
 - Contractor may substitute SBE participation of no more than 4% of the MBE goal, the WBE goal or portions of the MBE goal and WBE goal
- Outlines limitations in use of Native-American MBE certified firms based on a recent court decision.

Document 808: *Requirements For The City of Houston Program for Minority, Women and Small Business Enterprises (MWSBE) and Persons with Disabilities Enterprises*

- Outlines MWSBE program requirements in detail, including those listed in Document 800
- City of Houston Good Faith Efforts Policy is attached as an exhibit to Document 808



Native American Owned Businesses – Construction Projects Only



As a result of a United States District Court *Final Judgement & Permanent Injunction*, the City is required to remove Native-American owned businesses that are certified as Minority Business Enterprises from its construction program on City-funded projects.

- Effective March 2016
- Contractor may not use Native-American owned firms that are certified as MBEs to meet MBE contract goals. Native-American firms can only be used as SBEs in fulfillment of MBE goal up to 4%.
- There are no restrictions on the use of Native-American certified WBEs to fulfill WBE goals on a construction contract.
- Contractors are encouraged to use Native-American certified firms for non-goal credit work on construction contracts.





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Pre-Bid/Pre-Award Good Faith Efforts



Written Good Faith Efforts Policy: Pre-Award

Policy elements include:

- Attend pre-bid meeting
 - Outreach and Advertisement
 - Access and Point-of-Contact
 - Notice and Solicitation
 - Contracts and Negotiations
 - Designations and Explanations
 - New Efforts
- This is NOT an exhaustive list. This is NOT an exclusive list.
- 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.houstontx.gov/obo>





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Pre-Bid Good Faith Efforts Forms Documents 470, 471 and 472*

***Unless specified, these documents do not apply to CMAR/Design-Build projects**



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Enhanced Document 470 - Participation Plan



Participation Plan – Document 470



<<ShortFirmName>>
WBS NO. «WBSNo»

BIDDER'S MWSBE
PARTICIPATION PLAN

Document 00470

BIDDER'S MWSBE PARTICIPATION PLAN

The Bidder or Proposer shall submit this completed form with the bid, to demonstrate the Bidder/Proposer's plan to meet the contract-specific MWSBE goal(s) ("contract goal(s)"). If the Bidder or Proposer cannot meet the contract goal(s), the Bidder/Proposer has the burden to demonstrate "Good Faith Efforts", which shall include correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), a Request for Deviation from the Goal (Document 00472), and providing supporting documentation evidencing their "Good Faith Efforts", as required by the City of Houston's Good Faith Efforts Policy (Document W806). The City will review the Participation Plan and Good Faith Efforts at the time of bid opening. Visit <http://www.houston.tx.gov/obo> for more information.

City Contract Goal	MBE	WBE	<ul style="list-style-type: none"> • MBE and WBE Goals are two separate Contract Goals. • Any excess of one Goal cannot be applied to meet another Goal. • An SBE can be applied to the MBE and/or WBE Goal, but not to exceed 4%. • Only up to 50% of the Total Goal (City Contract Goal) may be met using Suppliers. 		
NAICS Code (6 digit)	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price (2 decimal places, Example: 5.00 %)	Services or Supplier	Cert. Type for Goal: MBE, WBE, or SBE	Certified Firm Name Firm Address Contact Name Phone No. and E-Mail
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	

Signature for Company: _____

Printed Name: _____

Company Name: _____

Phone #: _____

Date: _____

Bidder's Participation Plan Total	MBE	WBE	SBE

*I understand that supplying inaccurate information may violate Texas Penal Code Section 37.10 and lead to City sanctions.
00470-1
07-1-2016

<<Bidder or Proposer Name>>

Participation Plan: Document 470

- Captures the MWSBE participation that the Bidder commits to achieve for the contract.
- Helps the Contracting Department and OBO determine whether the Bidder has a plan to actually meet the goal.
- Bidder must submit Document 470 with the bid or else the bid is non-responsive.



Enhancements: Document 470



Document 00470

BIDDER'S MWSBE PARTICIPATION PLAN

The Bidder or Proposer shall submit this completed form with the bid, to demonstrate the Bidder/Proposer's plan to meet the contract-specific MWSBE goal(s) ("contract goal(s)"). If the Bidder or Proposer cannot meet the contract goal(s), the Bidder/Proposer has the burden to demonstrate "Good Faith Efforts", which shall include correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), a Request for Deviation from the Goal (Document 00472), and providing supporting documentation evidencing their "Good Faith Efforts", as required by the City of Houston's Good Faith Efforts Policy (Document 00808). The City will review the Participation Plan and Good Faith Efforts at the time of bid opening. Visit <http://www.houston.gov/obg> for more information.

City Contract Goal	MBE	WBE	<ul style="list-style-type: none"> • MBE and WBE Goals are two separate Contract Goals. • Any excess of one Goal cannot be applied to meet another Goal. • An SBE can be applied to the MBE and/or WBE Goal, but not to exceed 4%. • Only up to 50% of the Total Goal (City Contract Goal) may be met using Suppliers. 		
NAICS Code (6 digit)	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price (2 decimal places, Example: 5.00 %)	Services or Supplier	Cert. Type for Goal: MBE, WBE, or SBE	Certified Firm Name Firm Address Contact Name Phone No. and E-Mail
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	
				MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	

Emphasizes the following requirements and restrictions:

- Only up to 50% of the total City Contract Goal may be met using Suppliers.
- Includes a column for Contractor to specify whether certified firm is being used as a supplier or service provider.



What must be completed in Document 470?

Document 00470

BIDDER'S MWSBE PARTICIPATION PLAN

The Bidder or Proposer shall submit this completed form with the bid, to demonstrate the Bidder/Proposer's plan to meet the contract-specific MWSBE goal(s) ("contract goal(s)"). If the Bidder or Proposer cannot meet the contract goal(s), the Bidder/Proposer has the burden to demonstrate "Good Faith Efforts", which shall include correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), a Request for Deviation from the Goal (Document 00472), and providing supporting documentation evidencing their "Good Faith Efforts", as required by the City of Houston's Good Faith Efforts Policy (Document 00808). The City will review the Participation Plan and Good Faith Efforts at the time of bid opening. Visit <http://www.houstontx.gov/obo> for more information.

City Contract Goal	MBE	WBE	<ul style="list-style-type: none"> • MBE and WBE Goals are two separate Contract Goals. • Any excess of one Goal cannot be applied to meet another Goal. • An SBE can be applied to the MBE and/or WBE Goal, but not to exceed 4%. • Only up to 50% of the Total Goal (City Contract Goal) may be met using Suppliers. 		
NAICS Code (6 digit)	Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)	% of Total Bid Price (2 decimal places, Example: 5.00 %)	Services or Supplier	Cert. Type for Goal: MBE, WBE, or SBE	Certified Firm Name Firm Address Contact Name Phone No. and E-Mail
238910	Demolition	5.00%	Services	MBE <input checked="" type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>	A.W. Willis & Assoc. 5917 Los Angeles Houston, TX 77026 713-631-2000 – A.W. Willis awayewillis@yahoo.com

Document 470 Required Fields

- NAICS Code
- Description of Work (Viable Work Elements)
- Percent (%) of Total Bid Price
- Services or Supplier (NEW)
- Type for Goal (MBE, WBE, SBE)
- Certified Firm Name, Address, Contact Name, Phone Number and E-mail





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Assessing Your MWSBE Participation Plan on Document 470



Achievement of the Goal



- MBE and WBE goals are **separate subcontracting** goals to be met individually.
- Any **excess** of the MBE or WBE Goal **cannot** be used to meet a deficient MBE or WBE goal
- **Only 4% SBE** can be used to meet either the MBE and/or WBE Goal, but both cannot get 4% each.
- **Suppliers** can contribute up to **50%** of the total Contract Goal.
 - *Supplies alone do not stimulate growth among MWSBEs, therefore a limit is required to achieve the program's goal.*



City Online Directory



City of Houston MWSBE/PDBE and DBE Directory

Search the City of Houston's MWSBE/PDBE and DBE Directory by entering search terms and clicking Search. You must select at least one certification type.

NOTE: This online directory lists firms certified by the City of Houston. Firms that appear in the City of Houston Directory are currently certified and approved to be utilized toward meeting established contract goals in their displayed certification type(s) (i.e. MBE, WBE, SBE, PDBE, DBE and/or ACDBE). Firms that do not appear in the City of Houston Directory as of the date of your search are not certified with the City of Houston.

***NEW* Construction Contracts Only**
Native-American-owned firms that are certified as MBEs cannot be used to meet MBE goals on construction contracts. Subject to any stated limitations imposed by the City of Houston, Native-American-owned firms can only be used as SBEs in the fulfillment of MBE goals.

For DBE firms, an agreement mandated by Federal DOT establishes a central directory (UCPI) located on the State of Texas website. The combined TUCP directory contains DBE firms certified by all TUCP partner agencies, including the City of Houston. Please use this directory when searching for DBE certified firms.

Search by Business Name or DBA

Business Name/DBA
Tip: Try just a few letters of the firm's name.

Search by Business Description

Business Description
Tip: Try just a few letters of a keyword.

Search by Commodity Code

Commodity Code [Click to Lookup Commodity Code](#)
(popup window will appear to browse and search available Commodity Codes)

Search by Contact Person

Contact Person/Owner

First name Last name
Tip: Use the first letter. Tip: Try just the first few letters.

Search by Location

City

State

Zip Code

Phone Area Code

Search by Certification Type

Certifications

- Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)
- Minority Business Enterprise (MBE)
- Persons with Disabilities Business Enterprise (PDBE)
- Small Business Enterprise (SBE)
- Women Business Enterprise (WBE)
- Disadvantaged Business Enterprise (DBE)

Search by Reference

Category

HUB?

Download Entire Directory:

- Only City of Houston Certified firms may be used to meet either the MBE Goal or WBE Goal

- Visit OBO Website at <http://www.houstontx.gov/obo/> and click on directory link to search for City certified vendors.





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Calculating Participation



Calculating Participation – Example 1



Goals: 13% MBE and 8% WBE Contract Goals

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

- **SBE: 6%** 4% of SBE may be used to meet the MBE and/or WBE goal.
- **MBE: 9%** + 4% (from SBE) = 13%
- **WBE: 8%** + 13% = 21%

Does this plan meet the Goals?

YES!!



Calculating Participation – Example 2



Goals: 11% MBE and 8% WBE Contract Goals

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

- **SBE: 12%** **ONLY** 4% of SBE may be used to meet the MBE and/or WBE goal. **NOT 4% FOR EACH!**
- **MBE: 6%** The remainder SBE percentage **CANNOT** be used for MBE goal calculation.
- **WBE: 4%** + 4% (from SBE) = 8%
Only the WBE Goal is met.

Does this plan meet the Goals?

NO!!



Calculating Participation – Example 3



Goals: 15% MBE and 5% WBE Contract Goals

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

- **MBE: 15%**
 - 14% from Suppliers
 - 1% Service Provider
 - **WBE: 5%**
- Only up to 50% of the Total Goal may be calculated from Suppliers.
 - Use of Suppliers is limited to 10%.
 - MBE goal met at 11% (10% Suppliers & 1% Service Provider)

Does this plan meet the Goals?

NO!!

After Assessment: 11% MBE, 5% WBE Total: 16%



Remember...



- ✓ Contractor completely fills out the Document 470 PRIOR to bid submission.
- ✓ Contractor MUST submit Document 470 with the bid or else the bid is non-responsive.
- ✓ Contractor must fill in each box COMPLETELY.
- ✓ SIGN the document.

All information must be provided in order to be deemed responsive.





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When Should the Contractor Demonstrate Good Faith Efforts?



Reviewing Good Faith Efforts



If Contractor's participation plan provides for MWSBE participation less than the advertised contract goals or includes an excessive use of MWSBE suppliers for goal credit, Contractor must also submit the following, in addition to Document 470:

Document 471

- Pre-Bid Good Faith Efforts

AND

Document 472

- Bidder's MWSBE Goal Deviation Request

Supporting Documentation, if any



If Document 471 and 472 are not submitted, Document 470 will be solely evaluated and more than likely will result in a unfavorable GFE determination.





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Document 471 – Pre-Bid Good Faith Efforts



Pre-Bid Good Faith Efforts - Document 471

[Short Project Name] PRE-BID
WBS No. [WBS No.] GOOD FAITH EFFORTS

Document 00471

PRE-BID GOOD FAITH EFFORTS

Bidder Name: _____ Project Name _____

A Bidder or Proposer that may be unable to complete or follow a Participation Plan (Document CCD-00470) to meet the Contract Goal in the Supplemental Conditions (Document 00800), must submit this completed form, Goal Deviation Request Form (Document 00472), providing supporting documentation evidencing their "Good Faith Efforts", as required by the City of Houston's Good Faith Efforts Policy (see Document 00808).

The Bidder or Prime Contractor has the burden to demonstrate "Good Faith Efforts" to meet the MWSBE goal, which includes correctly and accurately preparing and submitting this form and other efforts described in the City's Good Faith Efforts Policy (Document 00808). The Office of Business Opportunity will review Good Faith Efforts and Participation Plan after selection of an apparent low bidder.

UNLESS THE BIDDER'S/PROPOSER'S PARTICIPATION PLAN MEETS THE CONTRACT GOAL, FAILURE TO SUBMIT THIS FORM MAY RESULT IN THE BID BEING FOUND NON-RESPONSIVE.

NAICS Code	Plan Item No.	MWSBE Type for Goal	Certified Firm Name Address, Phone No. and E-Mail	Certified Firm Contact Person	Methods of Contact	Prime Contact Dates	Certified Firm Response	Results of Contact (why suitable or not suitable for work)
		MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>			Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/>			
		MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>			Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/>			
		MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>			Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/>			
		MBE <input type="checkbox"/> WBE <input type="checkbox"/> SBE <input type="checkbox"/>			Phone <input type="checkbox"/> E-mail <input type="checkbox"/> Fax <input type="checkbox"/>			

Authorized Signature: _____ Date: _____ Phone: _____
Print Name: _____ Email Address: _____
Company Name: _____

00471-1
August 2013

- Allows the Contractor to document good faith efforts to meet the advertised MWSBE goals.
- Allows OBO to see Contractor's efforts made to find MWSBE firms.
- Contractor must fully complete the bottom portion of the document.
 - Certified Firm Name, Address, Contact Name, Phone Number and E-mail





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Document 472 – Bidder's MWSBE Goal Deviation Request



Bidder's MWSBE Goal Deviation – Document 472



[Short Project Name]
WBS No. [WBS No.] BIDDER'S MWSBE GOAL
DEVIATION REQUEST

Document 00472

BIDDER'S MWSBE GOAL DEVIATION REQUEST

Company Name: _____

Project Name: _____

Department Approved Contract Goals	MBE %	WBE %	Total %	
------------------------------------	-------	-------	---------	--

Bidder's Proposed Participation Plan	MBE %	WBE %	SBE (Max 4% for Credit) %	Total %
--------------------------------------	-------	-------	---------------------------	---------

Justification: Please provide the reason the Bidder is unable to meet the Contract Goal in Document 00800.

Good Faith Efforts: Please list any efforts not listed in the Bidder's Pre-Bid Good Faith Effort (Document 00471) and provide supporting documentation evidencing "Good Faith Efforts", as required by the City of Houston's Good Faith Efforts Policy (Document 808).

Date: _____ Company Name: _____

Email: _____ Company Representative: _____

Phone Number: _____ Title: _____

FOR OFFICIAL USE ONLY: Approved Not Approved

OBO Representative _____ Date: _____

_____ Title: _____

00472-1
August 2015

Allows Contractor to explain two things:

1. Why the Contractor was unable to meet the advertised MWSBE goals outlined in Document 800; and
2. What good faith efforts the Contractor made that were not captured on Document 471 and provide additional justification.

Contractor must fully complete the bottom of the form.

- Certified Firm Name, Address, Contact Name, Phone Number and E-mail



True or False



After bid submission, Bidder can submit supplementary documents and/or additional justifications that outreach was conducted to OBO for review and deliberation.



True



False



Important!!!



- You either turn in ONE document if you meet the Contract Goals:
(Document 00470); OR
- You turn in THREE documents if you cannot meet the Contract Goals:
(Documents 00470, 00471, & 00472)
- Bidders will be contacted by the OBO only for clarification purposes on a case-by-case basis.





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Case Studies



OBO's Assessment



- GFEs are evaluated on a case-by-case basis in making a determination whether a Bidder is in compliance with the City's Good Faith Efforts Policy for goal attainment.
- As per Policy, efforts are those that one could reasonably expect a Bidder to accomplish if Bidder were actively and aggressively attempting to obtain MWSBE participation to meet the contract goals.
- OBO reviews all documents provided by Bidders with bid submission and relevant information from Contracting Departments in making a GFE determination.
- Bidders will be contacted by OBO only for clarification purposes, when necessary.



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 **Central Library Plaza Improvement** project with a **18.00 % MBE** & **10.00 % WBE** Contract Goals.

- Contractor's Participation Plan: **18.45% MBE** , **4.41% WBE**, **0.23% SBE**
- Contractor met the **MBE** Goal, however, Contractor failed to meet the **WBE** Goal by **5.36 %**. Contractor could use **SBE %** toward meeting the **WBE** goal:

MBE = 18.00%, WBE = 4.64%. MBE Goal Met, but WBE Goal Unmet by 5.36%

- **Contractor provided the following documentation for evaluation:**

- Documents 470, 471 & 472
- Documents provided the following information:
 - MWBEs contacted and contact details
 - Certification Type
 - Identified several work elements within the Scope of Work
 - MWBE's work capabilities & relevant scope of work
 - Stated bid invitation was e-blasted to 800 construction firms which included MWSBE certified subcontractors.
 - Dates of contact for fax and email notification, and telephone call follow ups
 - Results of contact with MWBEs



Case Study 1- Approved Good Faith Efforts



Department Services evaluated documentation and verified details

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

- Identified and designated portions of the work to be performed by MWSBEs to increase the likelihood of meeting the contract goals by encouraging proposals in various scopes of work
- Notified a reasonable number of certified MWSBEs
- Followed up to determine if they were interested in submitting a bid or participating on a team
- Solicited MWSBEs within a reasonable amount of time by providing written notification to MWBEs more than 7 business days before bid submission
- Provided MWSBEs access to the plans, specifications, scope of work and requirements
- Negotiated with MWSBEs by proposing a participation plan of 22.64%
- Attended the City's pre-bid meeting



Denied Good Faith Efforts



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

- Not enough divisibility
- Contractor self-performing the work
- Not enough low MWBE bids without explanations
- Specialty nature of work
- Running out of time



It is important to address contract goal challenges at the City's Pre-Bid meetings



Case Study 2- Denied Good Faith Efforts



A **Large Diameter Sanitary Sewer Inspection** project with a **3.20 % MBE** & **1.18 % WBE** Contract Goals.

- Contractor's Participation Plan: **3.92% MBE** , **.40% WBE**, **0.10% SBE**
- Contractor met and exceeded the **MBE** Goal, however, Contractor failed to meet the **WBE** Goal by **.68 %**. Contractor could use **SBE** % toward meeting the **WBE** goal:

MBE = 3.92%*, WBE = .50%. MBE Goal Met, but WBE Goal Unmet by .68%

* Excess MBE credit may not be used to compensate for lacking WBE goal participation

- **Contractor provided the following documentation for evaluation:**

- Documents 470, 471 & 472

- Contractor provided the following:

- MWBEs contacted and contact details
- MWSBEs' Certification type
- MWBEs' work capabilities
- Identified and designated portions of the work to be performed by MWSBEs



Case Study 2- Denied Good Faith Efforts



Department Services evaluated documentation and investigated details

Contractor did not *demonstrate* a genuine effort to comply with the City's Good Faith Effort Policy :

- Dates MWBEs were contacted were not identified
- Method of contact for MWBEs was not identified
- Results of contact from MWBEs were not identified
- Dates Organizations and Associations contacted and results of contact was not identified
- Method of contact for Organizations and Associations was not identified
- Bidder listed no additional efforts beyond their outreach to one sole WBE as listed on the Document 00470



Tips to Increase Pre-Bid Goal Attainment



- Establish relationships with MWSBEs in advance
- Subdivide the work
- Use the City Of Houston MWSBE Directory to find firms
- Directly solicit to MWSBEs in a timely manner
- Provide relevant bidding/contract information to MWSBE Firms
- Advertise opportunities
- Offer assistance to MWSBEs
- Go back to subcontractors that you've done business with in the past and ask them to bid
- If no one responds to your email blasts, pick up the phone and call to ask if they are going to bid
- Review CIP in advance and discuss projects and opportunities with MWSBEs





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OBO's Assessment of GFE & Appeals Process



OBO's Determination



The Contracting Department will be notified via e-mail of whether the submitted Bidder's GFE has been approved or denied.

- If approved, OBO will notify Contracting Department of the determination. Contracting Department may then move forward with next steps in the procurement process.
- If denied, the Contracting Department has two (2) business days in which to take exception to OBO's determination.
- If the Contracting Department accepts OBO's decision, then OBO will notify the Bidder of the denial in writing via email.



Appeals Process for Denials



- The Bidder has an opportunity to appeal a denial decision to OBO within **three (3) business** days after notification by OBO of the denial.
- If the decision to deny is upheld by the OBO Director or designee, the Bidder will have an opportunity to appeal to the City's Legal Department.
- The request for an appeal to the OBO Director's decision must be made in writing and sent via email to OBO at director.obo@houstontx.gov. The written appeal request must be received within **three (3) business days** of the date of the OBO's Director's decision letter.
- The Legal Department's written decision represents the City's final determination.





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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 MWSBE goal or fails to use all of the approved goal credit subcontractor on their Participation Plan, the Prime must demonstrate that their failure to do so was based on circumstances that they could not reasonably control.
- Like for Pre-Award GFE, the City's *Good Faith Efforts Policy (Doc 808)* 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(s).
- Execute and submit required subcontracting agreements outlining terms of engagement.
- Keep a log of efforts made throughout course of contract to meet goals.
- Contact OBO for assistance if you are experiencing challenges meeting your goals.
- When possible, provide subcontractors with advance notice when they will be needed for project.
- Document opportunities that exist with all additional work and your efforts to solicit MWSBEs.



Documenting Good Faith Efforts



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



Documenting Good Faith Efforts



- Attach a value to additional opportunities that arise.
- Document MWSBEs you contact & their responses.
- After contract has been awarded, look for other MWSBEs to perform and request that their dollars be added for credit as backup.
- Ask your MWSBEs whether they will execute their work utilizing other subcontractors/truckers/suppliers.
- Make sure MWSBE firms are performing a **Commercially Useful Function**
- If truckers/suppliers/subcontractors will not meet requirement for full credit, find out up front how much credit their work will result in.



Documenting Good Faith Efforts



- 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 MWSBE performs a commercially useful function 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 MWSBE has to be certified in the NAICS code in which they are performing.

- Prime Contractors only get goal credit when an MWSBE 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 MWSBE as well as reduce fraud.



Full Goal Credit For Certified Subcontractors

- MWSBEs that perform work they are certified for by the City.
- MWSBEs that perform work with their own crew.
- MWSBEs that subcontract their work to other MWSBEs.
- MWSBEs that purchase materials and install with their own workforce.



Full Goal Credit For Certified Truckers

- MWSBEs that use their own company trucks and employees on the project.
- MWSBEs that use equal number of their trucks and Owner Operators **or** use other non-certified firms. i.e. 1:1 ratio
- MWSBEs that use other MWSBE trucking firms to assist on project.



Full Goal Credit for Certified Suppliers

On City of Houston funded projects, suppliers that provide materials and supplies directly to the project will receive full credit if they meet **all** of the following requirements*:

- I. Negotiate price;
- II. Determine quality and quantity;
- III. Order the materials;
- IV. Show that the invoice is in the certified firm's name;
- V. Pay for the material;
- VI. Control delivery; **and**
- VII. Be certified to provide the supplies in the appropriate NAICS code

If a supplier does not perform **all** of these functions then the Prime cannot receive full credit for their work.



Partial Goal Credit



Subcontractors

- MWSBEs 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 MWSBE.

Truckers

- MWSBEs who use non-certified firms to do the work if 1:1 ratio is exceeded.
- MWSBE who hires all non-certified Owner-Operators for trucking.

Suppliers

- Suppliers who fail to meet all 7 criteria.

For all categories, partial credit will equal the fees and commission earned as long as appropriate documentation is provided.





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MWSBE Utilization Schedules & Participation Plan Deviations

MWSBE Utilization Schedule



The MWSBE Utilization Schedule is a forecast of the Prime's use of MWSBE firms to meet the MWSBE goal on projects.*

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

*** MWSBE Utilization Schedule is not applicable to work order contracts**



MWSBE Utilization Schedule



MWSDBE Utilization Schedule



Status as of: **Jan-16**
 Project Name: **Construction Project**
 WBS Number: **(enter WBS number)**
 Company Name: **PRIME**

Month	Total	SUB 1	SUB 2	SUB 3	
Jun-16	\$46,835	\$46,835	\$0	\$0	\$0
Jul-16	\$61,675	\$51,175	\$10,500	\$0	\$0
Aug-16	\$23,400	\$0	\$23,400	\$0	\$0
Sep-16	\$21,000	\$0	\$21,000	\$0	\$0
Oct-16	\$37,600	\$0	\$24,600	\$13,000	\$0
Nov-16	\$37,056	\$0	\$25,500	\$11,556	\$0
Dec-16	\$18,272	\$0	\$0	\$18,272	\$0
\$	\$245,838	\$98,010	\$105,000	\$42,828	\$0
%	24.58%	9.80%	10.50%	4.28%	0.00%

Contract Amount: \$1,000,000
Goal % 24.00%
Projected Goal% 24.58%
Goal \$ \$240,000
Project Goal \$ \$245,838

***Note: Actual dollar amounts are assumed if the date is in the past, otherwise numbers reflect projected dollar amounts.



Deviation Requests



- Work designated in the Prime's approved MWSBE participation plan cannot be completed by any other subcontractor, trucker, supplier or the Prime unless approved by OBO first.
- City has enhanced its deviation policy - 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 MWSBE, 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 MWSBE of its intent to request removal or substantially reduced participation
- Prime must provide MWSBE with specific reason(s) –reason(s) must constitute **“good cause”**
- Prime must give MWSBE five (5) business days to respond to the written notice.
- Prime must submit to OBO:
 - Copy of the notice to the affected MWSBE along with any objections by the affected MWSBE
 - 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 MWSBE participation plan if removal or reduction is approved.

Deviation: Removal or Reduced Participation



OBO's Review

- OBO will confirm MWSBE's consent or refusal
- If MWSBE does not consent to being removed, OBO will initiate mediation between the Prime and the MWSBE 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 MWSBE and the contracting department.



Deviation: Addition



- Prime must submit a completed online *Deviation Request* form when requesting to add an MWSBE 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 MWSBE.
- Prime must also provide an updated *MWSBE 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 you 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



Common Observations: Failure to Make GFE

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



Common Observations: Failure to Make GFE

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





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Final Contract Ratings



Assessment of Post-Award Good Faith Efforts



- Contractor's efforts to meet MWSBE contract goal(s) are assessed at the end of the project.
- Good Faith Efforts begins when the project is awarded, so start documenting then and submit all relevant documentation of your efforts to OBO by the end of the contract.
- Failure to make Good Faith Efforts will result in an "unsatisfactory" compliance rating.
- Ratings are reviewed by City Council and the Mayor.
- Unsatisfactory ratings may impact award of future projects if a sanction is imposed.



Contract Ratings For MWSBE Goal Compliance

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



Challenging an “Unsatisfactory” Rating

- OBO evaluates MWSBE goal compliance before final clearance and the final payment request is made to City Council on all construction projects.
- After evaluation of Contractor’s Good Faith Efforts to meet the MWSBE goal, Contractors are notified of their compliance rating via letter.
- Contractors who don’t agree with their ratings have 14 calendar days to challenge them by contacting Morris Scott at 832-393-0631 or via email at Morris.Scott2@houstontx.gov .
- OBO will review all explanations and documents submitted within that 14 day period, then notify Contractor of the final rating.
- **IMPORTANT:** The initial rating will become final if Contractor fails to challenge it within 14 calendar days.



MWSBE Compliance Ratings



Breakdown of Closed Construction Contracts with Goals from FY2012-FY2016

MWSBE Ratings*		
Outstanding	229	61%
Satisfactory	123	33%
Unsatisfactory	23	6%
Grand Total	375	100%

*Does not include HAS contracts.





Questions

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Sylvester Turner
Mayor

Carlecia D. Wright
Director

611 Walker, 7th Floor
Houston, TX 77002
www.houstontx.gov/obo

T. 713.837.9000 F. 713.837.9055





Thank You

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Sylvester Turner
Mayor

Carlecia D. Wright
Director

611 Walker, 7th Floor
Houston, TX 77002
www.houstontx.gov/obo

T. 713.837.9000 F. 713.837.9055

