2015 Good Faith Efforts Informational Session

Presented by:

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Division Manager, Contract Compliance, OBO
August 25, 2015
I. Good Faith Efforts Overview & Policy Companion Guide

II. Enhancements to Documents 470, 471 & 472

III. Assessing Good Faith Efforts & Appeals Process

IV. Review Post-Award Good Faith Efforts Requirements
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
• Goal-oriented contracts – a way to increase participation of MWSBEs
• An effort to remedy discriminatory practices and eliminate statistical disparities in city contracting.
• Goals are not quotas. The standard for meeting goals is demonstrating good faith efforts.
• Contract goals are based on divisibility of the work required under the contract and the availability of MWSBEs to perform the work.
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 Contract Goal throughout the duration of the contract.

*In other words, EVIDENCE of a genuine attempt to meet the Contract Goal.*
Good Faith Efforts Policy
Contract Document 808 - Appendix
 REQUIREMENTS FOR
THE CITY OF HOUSTON PROGRAM FOR
MINORITY, WOMEN, AND SMALL BUSINESS ENTERPRISES
AND PERSONS WITH DISABILITIES ENTERPRISES (PDBE)

CONSTRUCTION CONTRACTS

I. GENERAL

A. CITY AUTHORITIES

1. The “OBO Director” is the City of Houston’s Office of Business Opportunity
Director, or his or her designee.
City of Houston
611 Walker Street, 7th Floor
Houston, Texas 77002

2. The “Contracting Department” for this Project is the City of Houston Department
specified in Document 00520 – Agreement.

3. The “Project Manager” is for this Project specified in Document 00550 – Contract
Approval Notification.
Pre-Award Good Faith Efforts
Good Faith Efforts Policy: Pre-Award

Elements include:

• Attendance at 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.
Tips to Increase 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 subcontractor’s 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
Focuses on the documentation the City will consider to assess your good faith efforts in the following areas:

- Direct Solicitation of MWSBEs
- Outreach Efforts and Advertisement
- Whether you negotiated in good faith with MWSBEs

Companion Guide can be found on OBO’s website at [www.houstontx.gov/obo](http://www.houstontx.gov/obo)
CITY OF HOUSTON
COMPANION GUIDE TO THE OFFICE OF BUSINESS OPPORTUNITY
GOOD FAITH EFFORTS POLICY

Pre-Award Good Faith Efforts
The following is not intended to be an exclusive or exhaustive list of documentation the City of Houston will consider in assessing a Bidder’s good faith efforts. This list is intended to serve as a guide to Bidders of the types of documentation considered. The City may consider other types of documentation that may be relevant in appropriate cases.

A) Directly Solicit to Minority, Women and Small Business Enterprises (MWSBE)
   1. Pre-Bid Attendance: Bidder should indicate whether they attended the relevant pre-bid conference. The Office of Business Opportunity will request copy of sign-in sheet from Contracting Department.
   2. Written solicitation (Invitation to Bid) to MWSBEs listed in the City’s Directory no less than seven (7) business days before bid submission:
      a. Provide copies of emails and/or fax notices and confirmations sent directly to MWSBEs listing each MWSBE’s company name, contact person, phone number, e-mail address, certifications, result of contact (left message, no answer, etc.) and whether bid was received.
      b. Written solicitation should include the specific type of work, amount of work, and a brief description of the work being solicited.
      c. Written solicitation should include how MWSBEs can obtain information for the review and inspection of contract plans and specifications and provide the name of a knowledgeable contact person for questions.
      d. Provide phone logs, emails and/or fax confirmations showing evidence of follow-up to initial solicitations to determine if MWSBEs were interested in bidding.

B) Outreach and Advertisement
   1. Provide list of minority and women focused organizations and associations contacted no less than ten (10) business days before solicitation due date. See Organization Contact List on the OBO website at www.houston.gov/obo:
      a. Documentation should include name of organization, person contacted, phone number and/or email, date contacted and results of contact.
   2. If Bidder advertised in minority and women focused news media:
      a. Documentation should include the name of the news media, a copy of the advertisement and the date(s) of the advertisement.

Negotiated in Good Faith
1. Whether Bidders negotiated in good faith with interested MWSBEs, and not rejecting MWSBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
   a. Provide a detailed statement of the reasons why subcontractors were not entered into with sufficient number of MWSBEs to meet the advertised goal.
   b. Provide a list of MWSBEs you rejected, their contact information and reason for rejection.
   c. If price competitiveness was not the reason for rejection, provide a copy of the written rejection letter you sent to MWSBE firms, providing the reason for rejection.
   d. If price competitiveness was the reason for rejection, provide documentation that the rejection was discussed with the MWSBE if an explanation was requested by the MWSBE firm.

August 2015
Pre-Bid Good Faith Efforts Forms
Enhanced Documents 470, 471 and 472
Document 00470
Bidder’s MWSBE Participation Plan
Document 470 - Bidder’s MWSBE Participation Plan

- Submitted at the time of bid.
- Captures the MWSBE participation that the Bidder commits to achieve for that contract.
- Used for determining whether Bidder has a plan to meet the goal.
Language added to include Good Faith Efforts requirement to provide “supporting” documentation (page 1):

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 (“contract goal”). If the Bidder or Proposer cannot meet the contract goal, the Bidder/Proposer has the burden to demonstrate “Good Faith Efforts”, which shall include accurately and correctly preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), 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/bobo for more information.

<table>
<thead>
<tr>
<th>City Contract Goal</th>
<th>MBE</th>
<th>WBE</th>
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<tbody>
<tr>
<td>MBE and WBE Goals are two separate Contract Goals.</td>
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<tr>
<td>Any excess of one Goal cannot be applied to meet another Goal.</td>
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<tr>
<td>An SBE can be applied to the MBE and/or WBE Goal, but not to exceed 4%.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>NAICS Code (6 digit)</th>
<th>Description of Work (Plan Sheet #, Unit Price #, Scope of Work #, as applicable)</th>
<th>% of Total Bid Price (2 decimal places, Example: 5.00 %)</th>
<th>Cert. Type for Goal: MBE, WBE, or SBE</th>
<th>Certified Firm Name</th>
<th>Firm Address</th>
<th>Contact Name</th>
<th>Phone No. and E-Mail</th>
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<tbody>
<tr>
<td>MBE</td>
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<td>SBE</td>
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</table>
Language added to specify the City’s separate Contract Goals and how to count MWSBE participation in order to meet the City’s MWBE Contract Goal (page 1):

- 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%.
Example added to specify how MWBE participation percentage should be presented on form (page 1 and page 2):
• Selection boxes and language added to Certification Type for Goal.

• **Note:** One MWSBE firm cannot be used to meet multiple goals.
Document 00470 - Enhancement # 5

- Table added to list Bidder’s Participation Plan Total for MBE, WBE, SBE (page 1):

```
<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Description of Work [Plan Sheet #, Unit Price #, Scope of Work #, as applicable]</th>
<th>% of Total Bid Price (2 decimal places, Exemplar: 5.00 %)</th>
<th>Cert. Type for Goal: MBE, WBE, SBE</th>
<th>Certified Firm Name</th>
<th>Firm Address</th>
<th>Phone No. and E-Mail</th>
</tr>
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<tbody>
<tr>
<td>MBE</td>
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<td>WBE</td>
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**Bidder’s Participation Plan Total**

<table>
<thead>
<tr>
<th>MBE</th>
<th>WBE</th>
<th>SBE</th>
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<tbody>
<tr>
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Signature for Company:

Company Name:

Phone No.:

Date:

I, undersigned, declare that the information herein is true and correct.

City of Houston Office of Business Opportunity
Assessing Your MWSBE Participation Plan: 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.
- **Supplies** can contribute up to **50%** of the Contract Goal
  - Supplies alone do not stimulate growth among MWSBEs, therefore a limit is required to achieve the program’s goal.
Only City of Houston Certified firms may be used to meet either the MBE Goal or WBE Goal.

Calculating Participation
Calculating Participation – Example 1

• **Goals:** 13% MBE and 8% WBE Contract Goals

  These are separate goals to be met individually!

• **Bidder’s Numbers:**
  - 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 Goal?**

  YES!!
Goals: 11% MBE and 8% WBE Contract Goals

These are separate goals to be met individually!

• Bidder’s Numbers:
  - SBE: 12%  ➔ ONLY 4% of SBE may be used to meet either 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%

TOTAL: 22 %

Does this plan meet the Goal? Only the WBE Goal is met.

NO
Calculating Participation – Example 3

**Goals:** 15% MBE and 5% WBE Contract Goals

**Bidder’s Numbers:**
- **SBE:** 5%
- **MBE:** 13% – 11% from suppliers. – 2% Service
- **WBE:** 10%

**TOTAL Bidder Plan Submitted:** 28%

Does this plan meet the Goal?

**YES!!**

After Assessment: 12% + 3% = 15% MBE plus 5% WBE Total: 20%

Up to 4% of SBE participation may be calculated into MBE and/or WBE participation. In this case, MBE may be increased to 16%, after taking 3% of the allowed 4% SBE.

Only up to 50% of the Total Goal may be calculated from Suppliers. Here only 10% of Suppliers and the 2% of Service will be calculated into the MBE Goal for a total of 12% MBE participation.
Bidders completely fills out the 00470 PRIOR to bid submission.

Bidders MUST submit the 00470 with the bid or else the bid is non-responsive.

Bidders must fill in each box COMPLETELY.

SIGN the document.

All information must be provided in order to be deemed responsive.
When do you demonstrate Good Faith Efforts?
How to demonstrate Good Faith Efforts

If the bidder’s MWSBE participation plan is less than the Contract Goal, bidder must also submit:

- **Document 00471**
  - Pre-Bid Good Faith Efforts
- **Document 00472**
  - Bidder’s MWSBE Goal Deviation Request
- **Supporting Documentation**
Document 00471
Pre-Bid Good Faith Efforts
Submitted at the time of bid.

Documents Bidder’s Good Faith Efforts to meet the MWSBE goal.

Captures the amount of effort the bidder put into finding MWSBE firms.
• Language added to include Good Faith Efforts requirements and required documentation (page 1):
Document 00471 - Enhancement # 2

- Language underlined for emphasis (page 1):

**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.**

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Plan Item No.</th>
<th>MWSBE Type for Goal</th>
<th>Certified Firm Name Address, Phone No. and E-Mail</th>
<th>Certified Firm Contact Person</th>
<th>Methods of Contact</th>
<th>Prime Contact Dates</th>
<th>Certified Firm Response</th>
<th>Results of Contact (why suitable or not suitable for work)</th>
</tr>
</thead>
<tbody>
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Document 00471 - Enhancement # 3

• Selection boxes and language added to MWSBE Type for Goal (page 1 and page 2):
Bidder may attach an Excel Spreadsheet with equivalent information.
Document 00472
Bidder’s MWSBE Goal Deviation Request
Document 00472 – Bidder’s MWSBE Goal Deviation Request

- Submitted at the time of bid.
- Explains why the Bidder was unable to meet the advertised MWSBE goal; and
- Explains what good faith efforts the Bidder made that were not captured on Document 471

<table>
<thead>
<tr>
<th>Department Approved Contract Goals</th>
<th>MBE %</th>
<th>WBE %</th>
<th>Total %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder’s Proposed Participation Plan</td>
<td>MBE %</td>
<td>WBE %</td>
<td>SBE (Max 4% for Credit) %</td>
</tr>
</tbody>
</table>

**Justification:** Please provide the reason the Bidder is unable to meet the Contract Goal in Document 00470.

**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 0038).

**Date:** ____________

**Company Name:** ____________

**Email:** ____________

**Company Representative:** ____________

**Phone Number:** ____________

**Title:** ____________

**FOR OFFICIAL USE ONLY:**

- Approved [ ]
- Not Approved [ ]

**OBO Representative**

**Date:** ____________

**Title:** ____________
• Language added to SBE % Column of the Bidder’s Proposed Participation Plan Table:
• Language added to emphasize the need to provide supporting documentation.
• Lines for ‘Company Name’ and ‘Company Representative’ replaced the lines for ‘Bidder’ and ‘By’:

[Image of document with red arrow pointing at lines for 'Company Name' and 'Company Representative']
Important!!!

- You either turn in **ONE** document if you meet the Contract Goal: (Document 00470); **OR**

- You turn in **THREE** documents if you cannot meet the Contract Goal: (Documents 00470, 00471, & 00472)

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

- Bidders will be contacted by the OBO only for clarification purposes on a case-by-case basis.
Case Studies
Approved and Denied 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 **Plant Work** project with a **13 % MBE & 7 % WBE** Contract Goal.

- Bidder’s Participation Plan: **13.82% MBE, 0.00% WBE, 0.91% SBE**

- Bidder exceeded the **MBE** Goal, however the excess goal does not count towards the total MWBE Goal.
  Bidder failed to meet the **WBE** Goal by **7 %**. Bidder could combine **SBE %** toward meeting the **WBE** goal:
  - **MBE = 13.00 %, WBE = 0.91 %**  MBE Goal Met, but WBE Goal Unmet by **6.09 %**

- **Bidder provided the following documentation for evaluation:**
  - Documents 470, 471 & 472
  - Written narrative to explain step taken to achieve MWBE Goal
  - Documents provided the following information:
    - MWBEs contacted and contact details
    - Certification Type
    - MWBE’s work capabilities
    - Scope of work relevant to MWBE’s work capabilities
    - Dates of contact for fax and email notification, and telephone call follow ups
    - Results of contact with MWBEs
    - Fax log and email log submissions
    - Sample bid invitation with project details, point of contact & link to project plans & specs
    - Proof of advertising details and link where plans were made available to MWBEs
Department Services evaluated documentation and verified details

Bidder met Good Faith Efforts by providing documentation to demonstrate they:

- 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
- Provided a point of contact that was knowledgeable about the project who possessed decision-making authority to answer questions from MWSBE’s by providing estimator as a point of contact
- 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 in good faith with MWSBEs by proposing a participation plan of 13.91%
- Attended the City’s pre-bid meeting
Denied Good Faith Efforts

- Bidders 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
  - Specialty nature of work
  - Running out of time

*It is important to address Categorical Goal challenges at the City’s Pre-Bid meetings*
Case Study 2- Denied Good Faith Efforts

A Large Water Line with a 12% MBE & 7% WBE Contract Goal.

• Bidder’s Participation Plan: 2.34% MBE, 0.08% WBE, 1.07% SBE

• Bidder failed to meet the MBE and WBE Goal. Bidder could combine their SBE% toward meeting the MBE or WBE goal:
  • MBE = 3.41%, WBE = 0.08%, MBE Goal Unmet by 8.59%, WBE Goal Unmet by 6.92%.

• Bidder provided the following documentation for evaluation:
  • Documents 470, 471 & 472
  • Documents provided the following information:
    • MWBEs contacted and contact details
    • Certification Type
    • MWBE’s work capabilities
Case Study 2- Denied Good Faith Efforts

- Department Services evaluated documentation and investigated details
- Bidder provided documentation to demonstrate they:
  - 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
  - Negotiated in good faith with MWSBEs by proposing a participation plan of 3.49%
  - Solicited bids in news media and organizations focused towards minority and women
  - Notified a reasonable number of MWSBEs
- While bidder demonstrated the above, a Good Faith Effort was not established:
  - Dates MWBEs were contacted was not identified
  - Method of contact for MWBEs was not identified
  - Results of contact from MWBEs were not identified
  - Dates Organizations and Associations contacted was not identified
  - Method of contact for Organizations and Associations was not identified
  - Results of contact from Organizations and Associations were not identified
Case Study 2- Denied Good Faith Efforts (Cont)

• The City’s Good Faith Efforts Policy outlines a multitude of options in order to make the requisite good faith efforts request.

• The bidder did not *demonstrate* a genuine effort to comply with the City’s Good Faith Effort Policy:
  • Media and organizations were not notified within a timely manner
  • Method of contact for Organizations and Associations was not identified
  • MWBEs were not notified within a timely manner
  • Method of contact for MWBEs was not identified
  • No follow up to determine if they were interested in submitting a bid or participating on a team
  • Bidder did not provide interested MWSBEs certified to perform the work with prompt access to plans, specifications, scope of work and requirements of the contract
  • Bidder did not provide a point of contact that was knowledgeable about the project and possessed decision-making authority to answer questions
  • Bidder did not attend pre-bid meeting
Appealing A Good Faith Efforts Denial
Appeals Process

Once OBO notifies Bidder of the Denial:

• Bidder may appeal by making a written request to OBO’s Director via email at director.obo@houstontx.gov within (3) three business days from the date of the notice of denial.

• If the OBO Director upholds the Denial, the Bidder may appeal that decision by making a written request to the Legal Department’s Contract Section via email at director.obo@houstontx.gov within three (3) business days of the date of the Director’s decision.
Appeals Process

• The decision rendered by the Legal Department will be the final determination by the City of Houston regarding the Pre-Bid Good Faith Efforts Request.

• Bidder will be provided a written determination at each stage of the appeals process.

***Failure to submit Good Faith Efforts (Forms 470, 471 & 472) results in waiver of the right to appeal OBO determination.
Post-Award Good Faith Efforts
Post-Award Good Faith Efforts

• If Contractor fails to achieve the Participation Plan Percentage, Contractor must demonstrate its efforts to meet the Participation Plan Percentage and failure to do so based on circumstances that the contractor could not reasonably control.

• The Good Faith Efforts Policy (Doc 808) outlines those factors that will be considered in determining post-award good faith efforts.

• Remember: MWBE goals are not quotas. The standard for meeting MWBE goals is the demonstration of good faith efforts.
Good Faith Efforts Policy: Post-Award

- Designate an MWSBE liaison officer
- Provide up-to-date Utilization Plans & Schedules and promptly upload payments to the contract management system.
- Genuinely attempt to resolve disputes with certified firms
- Request a deviation when needed, and make good faith efforts to replace MWSBE with another MWSBE
- Promptly respond to inquiries from City regarding MWSBE participation for goal credit
- Ensure goal credit MWSBEs are performing a Commercially Useful Function
Good Faith Efforts Policy: Post-Award (Cont.)

- Provide information that is factually accurate and free of material misrepresentation
- Attend all meetings and mediation hearings requested by the City
- Notify OBO of effect of change orders on Participation Plan

**City may consider other factors or types of relevant efforts in appropriate cases, as documented by contractor.**
Assessment of Good Faith Efforts

• Contractor’s efforts to meet the MWBE contract goal are assessed at the end of the project
• Failure to make good faith efforts will result in “unsatisfactory” compliance rating
• Ratings are reviewed by City Council and Mayor
• Unsatisfactory ratings may impact award of future projects if a sanction is imposed.
Documenting Good Faith Efforts

• Document all efforts made to comply with the goal(s)
• Execute subcontracting agreements outlining terms of engagement (required)
• Keep a log of efforts made throughout course of contract to meet goals
• Contact OBO for assistance if you are experiencing challenges meeting your goal
• When possible, provide subcontractors with advance notice when they will be needed for project
Common Observations: Failure to Make GFE

- Failure to respond to inquiries (letters, email, calls) regarding MWSBE utilization
- Failure to execute subcontracting agreements outlining terms of engagement
- Lists MWSBEs for goal credit without notifying subcontractors
- Failure to submit deviation request for a change in Participation Plan
- Failure to fully report payments made to MWSBEs
Common Observations: Failure to Make GFE

- Self performing work intended for MWSBEs, without notification
- 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
Commercially Useful Function

• 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. 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
Commercially Useful Function & Goal Credit

• **Subcontractors** must:
  – Perform specific work items with own forces pursuant to a contract agreement with prime

• **Suppliers** must:
  – (a) Negotiate price;
  – (b) Determine quality and quantity;
  – (c) Order the materials;
  – (d) Show that the invoice is in the certified firm’s name;
  – (e) Pay for the material itself;
  – (f) Control delivery; and
  – (g) Be certified to provide the supplies in the appropriate NAICS code

• **Truckers** must:
  – Use their own trucks and trucks owned and operated by other certified City of Houston firms.
  – For each truck the MWSBE firm owns, that firm may receive credit for one truck used on the project, owned by a non-certified firm.
Challenging an “Unsatisfactory” Rating

• OBO evaluates the MWBE compliance of Contractors before final clearance and a final payment request is made to City Council on all construction projects.

• After evaluation of Contractor’s good faith efforts to meet the MWBE goal, Contractors are notified of their compliance rating via letter.

• Contractors who don’t agree with their ratings have 14 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, then notify Contractors of the final rating.

• The initial rating will become final if Contractor fails to challenge it within 14 days.
Questions
THANK YOU