EDUCATE.  CONNECT.  GROW.
Pre-Bid
Good Faith Efforts
Assessment

Presented by
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Overview of Presentation

I. Purpose
II. Discussion of Good Faith Efforts Policy
III. Assessing your Participation Plan
IV. Case Studies of Approved & Denied GFEs
V. Appealing a Final Determination
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?

- Steps taken to achieve a Contract Goal which, by their scope, intensity and usefulness DEMONSTRATED the bidder’s responsiveness to fulfill the business opportunity objective prior to the award of a contract.

  In other words, EVIDENCE of a genuine attempt to meet the contract goal.
Good Faith Efforts

- Good Faith Efforts are a **REQUIREMENT** to be demonstrated by a successful bidder on goal oriented contracts **PRIOR** to the award.

- If a bidder anticipates it cannot or will not meet the contract goal prior to the award, a Good Faith Effort demonstration is **REQUIRED** to be eligible for the award.
Good Faith Efforts Policy
Contract Document 808 - Appendix
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
Good Faith Efforts Policy

Elements include:

- Attendance at pre-bid meeting to identify issues and Follow-Up
- Outreach and Advertisement
- Identify and Designate
- Access and Point-of-Contact
- Notice and Solicitation
- Contracts and Negotiations
- Explanations
- New Efforts
Attendance

- Attend pre-bid/pre-proposal meetings. If necessary, use meeting as opportunity to voice any concerns about contract goal.
Follow-up

- Follow-up with MWSBEs attending the meetings to discuss subcontracting opportunities. Contact MWSBEs in the City’s online directory to discuss subcontracting opportunities.
Outreach

• Conduct outreach with minority and women based organizations no less than 10 business days before solicitation due date.

  • Women Contractors Association
  • Hispanic Contractor’s Association
  • National Association of Minority Contractors
  • Chambers of Commerce
  • Houston Minority Supplier Development Council
  • Women’s Business Enterprise Alliance
Subdivide the Work

- Identify and designate work to be performed by MWSBEs that increase likelihood of meeting goal.
- Do not choose portions of work for which availability of firms is limited.
- Designate reasonably sized subcontracts to ensure participation.
Advertise subcontracting opportunities in news media.
Access to information and Point of Contact

- Designate a knowledgeable point of contact available to MWSBEs. Provide Contact’s name, phone number, e-mail, office address.

- Provide interested MWSBEs access to plans, scope of work, and requirements of the contract.
Notice and Solicitation

• Provide MWSBEs with written notice via email, mail, fax or other documented contact regarding subcontracting opportunities

• Solicit MWSBEs no less than 7 business days before bid submission

• Follow up with solicited MWSBEs to determine interest in bidding

Document Efforts!
Negotiate in Good Faith

- Negotiate in good faith with interested MWSBEs, and not rejecting MWSBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
Explain rejected bids:

- **Written notice to MWSBE** if price competitiveness was NOT the reason for rejection.

- **Follow up with/Set up meeting to discuss** if price competitiveness was the reason for rejection, if requested by MWSBE.

- **Notify** OBO of pass-throughs.
Where applicable:

• Assist MWSBE in obtaining credit lines and insurance.

• Ensure conditions and requirements for subcontracts meet industry standards without economic hardship to MWSBEs.
  
  ❖ Avoid unnecessary insurance

  ❖ Avoid coupling bid bonds with retainage
Incorporate New Efforts

- Efforts not attempted earlier or on previous bids that are likely to lead to attaining the contract goal.

- Past performance on similar contracts with similar scopes will also be taken in consideration.

- Bidder with continuous same efforts without significant changes in the level of participation is not considered to be making Good Faith Efforts.

- Mere formalities or obligatory acts are not considered as part of a bidder’s good faith 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.
At a minimum, the following should be submitted to support Good Faith Effort documentation:

- Fax logs, emails, and/or copies of documents sent to certified firms.
- Copies of written correspondence to certified firms.
- Phone logs with results of contact (*a phone contact list alone is not sufficient*).
- Lists and copies of letters sent by mail, hand delivered, or e-mailed.
- Breakdown of negotiations made with certified firms.
The following additional Good Faith Efforts factors may also be considered:

- Copies of advertisements and communications with local newspapers, trade associations, Chambers of Commerce and/or any other public media.
- Copies of emails or phone logs regarding assistance in bonding, lines of credit, or insurance.
- Copies of emails or phone logs regarding assistance in obtaining equipment, supplies, materials, or services.
- Copies of all bids received in response to Bidder contacting other firms.
- Records of discussion with sub-contractors prior to the beginning of the bid process.
The Participation Plan
Participation Plan: Document 470

- Captures the MWSBE participation that the Bidder commits to achieve for that contract.
- Helps Contracting Department and OBO determine whether the Bidder has a plan to actually meet the goal.
- The 00470 is submitted at the time of bid.
What goes into Document 470?

**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 correctly and accurately preparing and submitting this form, a Record of Good Faith Efforts (Document 00471), and a Request for Deviation from the Goal (Document 00472), the 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. For more information, visit [https://houston.mwdbe.com/](https://houston.mwdbe.com/).

**Required Fields**

- **NAICS Code**
- **Plan Item Number & Description of Work**
- **Percent of Total Bid Price**
- **MWSBE Type for Goal**
- **Certified Firm Name, Address, Contact Name, Phone Number and E-mail**

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<thead>
<tr>
<th>Document 00470</th>
<th><strong>Bidder’s Participation Plan</strong></th>
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<td>Plan Item Number (if applicable)/ Description of Work</td>
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<td>Plan Item #16: Electrical Design Services</td>
<td>WBE</td>
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<td>SBE</td>
<td>MBE, WBE</td>
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<td>WBE</td>
<td>Ferguson Consulting, Inc.</td>
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<td>37002 Tournament Lane</td>
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<td>Magnolia, TX 77355</td>
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<td>Carolyn Ferguson</td>
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<td>281 252-9232</td>
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<td><a href="mailto:Ferguson@tfi-ent.com">Ferguson@tfi-ent.com</a></td>
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Assessing Your Participation Plan
Achievement of the Goal

Effective July 1, 2013:

- Utilization plans (Document 470) are due at time of bid.
- 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, or the Total 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

• Visit OBO Website at http://www.houstontx.gov/obo/ and click “Certified Firm Directory” link to search for Houston Certified Vendors.
Calculating Participation
Calculating Participation – Example 1

• **Goal:** 21% MWBE Advertised Contract Goal
  - 13% MBE and 8% WBE

• **Bidder’s Numbers:**
  - SBE: 6%
  - MBE: 9% + 4% (from SBE) = 13%
  - WBE: 8% + 13% = 21%

• **Does this plan meet the Goal?**

  **YES!!**
Calculating Participation – Example 2

Goal: 19% MWBE Advertised Contract Goal

- 11% MBE and 8% WBE

Bidder’s Numbers:
- SBE: 12%
- MBE: 6%
- WBE: 4%

TOTAL: 22%

These are separate goals to be met individually!

- ONLY 4% of SBE may be used to meet either the MBE and/or WBE goal. NOT 4% FOR EACH!

- The remainder SBE percentage CANNOT be used for MBE goal calculation.

- 4% (from SBE) + 4% (from SBE) = 8%

Does this plan meet the Goal? NO

Only the WBE Goal is met.
Calculating Participation – Example 3

- **Goal:** 20% MWBE Advertised Contract Goal
  - 15% MBE and 5% WBE

- **Bidder’s Numbers:**
  - SBE: 5%
  - MBE: 13%
    - 11% from suppliers.
    - 2% Service
  - WBE: 10%
    - TOTAL Bidder Plan Submitted: 28%

Up to 4% of SBE participation may be applied to MBE and/or WBE participation. In this case, MBE may be increased to 15%, 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.

- **Does this plan meet the Goal?**
  - **YES!!**

  **After Assessment:** 12% + 3% = 15% MBE plus 5% WBE  Total: 20%
Calculating Participation – Example 4

- **Goal:** 20% MWBE Advertised Contract Goal
  - 15% MBE and 5% WBE

- **Bidder’s Numbers:**
  - SBE: 6%
  - MBE: 15%
    - All 15% from suppliers.
  - WBE: 10%
    - WBE Goal is met with 5%
      (the remainder WBE goal may not be used to alleviate the MBE goal)
  - TOTAL: 25%

- **Does this plan meet the Goal?**

  **NO**

  4% May be allocated to alleviate the deficient MBE percentage.

  Bidder exceeded 50% supply threshold. Only 10% of his MBE participation counts toward the MBE Goal.

  5% (WBE) + 14 (MBE with the allowed 4% SBE allocation) = 19%
Bidder 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?
If the bidder’s participation plan provides for MWSBE participation less than the Contract Goal, bidder must also submit:

- **Document 00471**
  - Pre-Bid Good Faith Efforts
  - AND

- **Document 00472**
  - Bidder’s MWSBE Goal Deviation Request
Document 00471: Record of Good Faith Efforts

- Allows the Bidder to document Good Faith Efforts to meet its MWSBE goal.
- Allows the City to see how much effort the bidder put into finding MWSBE firms.
- Bidder must fill out every box.
- Bidder must sign document.
Completing Document 00471

Doc. 471 requires similar information as Doc. 470 for the fields of:

- NAICS Code
- MWSBE Type for Goal
- Certified Firm Name, Address, Phone No. and E-mail
Completing Document 471

Bidder may attach an Excel Spreadsheet with equivalent information.

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**Capability**

- **Construction Services & Equipment**
- **Concrete Work**
- **Concrete, Limestone Materials, & Asphalt**
- **Supplies; Construction Mgmt; Hauling & Logistics**
- **Brooker of Aggregate & Other Construction Supplies**
What’s Next?

Pre-Bid Documents:

- Document 00470
  - Bidder’s MWSBE Participation Plan
- Document 00471
  - Pre-Bid Good Faith Efforts
- Document 00472
  - Bidder’s MWSBE Goal Deviation Request
The 00472 allows the Bidder to explain two things:

- Why the Bidder was unable to meet the advertised MWSBE goals; and

- What good faith efforts the Bidder made that were not captured on Document 471.

- Make sure this document is completely filled out.

- Make sure the Bidder has signed the document.
Important!!!

• Either you turn in **ONE** document if you meet the Contract Goal
  (Doc. 00470)

  **OR**

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

- For guidance with completing the required documents, please refer to the
  “New MWSBE Pre-Bid Requirements” Presentation at:
  http://www.houstontx.gov/obo/docsandforms/contractor_prebid_requirements.pdf
Evaluation and Assessment of GFE
GFE are evaluated by the OBO on a case-by-case basis in making determination whether a bidder or contractor is in compliance with this policy.

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

- A bidder’s Good Faith Efforts must be demonstrated at bid submission

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

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

Approved Good Faith Efforts usually consist of:

• Completed Documents

• Evidence of Good Faith Efforts

• Supporting Documents
A Plant Work project with a 20% MWBE Goal (13% MBE, 7% WBE).

- Bidder’s Participation Plan: MBE = 13.82%, WBE = 0.00%, SBE = 0.91%, Total = 14.73%
- 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:
  \[
  \text{MBE} = 13.00\%, \quad \text{WBE} = 0.91\% \quad \text{Total Goal} = 13.91\%, \quad \text{Unmet WBE Goal} = 6.09\%
  \]
- 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:
    - MWBE’s contacted and contact details
    - Certification Type
    - MWBE’s work capabilities
    - Scope of work relevant to MWBE’s work capabilities
    - Date 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
A Lift Station project with an 18% MWBE Goal (11% MBE, 7% WBE).

- Bidder’s Participation Plan: **MBE** = 15.12%, **WBE** = 0.80%, SBE = 2.47%, Total Goal = 18.374%

- 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 6.20%. Bidder could combine their SBE % toward meeting the MBE goal: MBE = 11.00%, WBE = 3.27%, Total Goal = 14.27%, **Unmet WBE Goal** = 3.73%

- **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
    - Date of contact for phone and/or email notification
    - Response from 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 various scopes of work
  • Notified a reasonable number of certified MWBEs
  • solicited MWSBEs within a reasonable amount of time by providing written notification to MWBEs more than 7 business days before bid submission
  • Followed up to determine if they were interested in submitting a bid or participating on a team
  • Negotiated in good faith with MWSBEs by proposing a MWSBE participation plan of 14.27%
  • Attended the City’s pre-bid meeting
Denied 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 MWBE bids
  - Running out of time
  - Specialty nature of work

*It is important to address Goal challenges at the City’s Pre-Bid meetings*
Denied GFE – Case Study 1

A Lift Station with an 18% MWBE Goal (11% MBE, 7% WBE).

- Bidder’s Participation Plan: **MBE = 2.56%, WBE = 23.65%, SBE = 0.45%, Total = 26.66%**
- Bidder exceeded the WBE Goal, however the excess goal does not count towards the total MWBE Goal. Bidder failed to meet the MBE Goal by 8.44%. Bidder could combine their SBE% toward meeting the MBE goal: MBE = 3.01%, WBE = 7%, **Total Goal = 10.01%, Unmet MBE Goal = 7.99%**

- **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
    - Date of contact for phone and/or email notification
    - Response from MWBEs
Denied GFE – Case Study 1

- Department Services evaluated documentation and verified 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 10.01%
  - 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:**
  - Media and organizations were not notified within a timely manner
    - Organizations were given 6 business day notice, which is less than the minimum 10 business days
    - 60% of emails sent were undeliverable
    - 20% of the organizations were not relevant to solicit bids
  - MWBEs were not notified within a timely manner
    - MWBEs were given 6 business day notice, which is less than the minimum 7 business days
Denied GFE – Case Study 1

• 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
  • MWBEs were not notified within a timely manner
  • No follow up to determine if they were interested in submitting a bid or participating on a team
  • No follow up to organizations and associations to correct undelivered emails
  • 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
A Large Water Line with a **19%** MWBE Goal (12% MBE, 7% WBE).

- Bidder’s Participation Plan: **MBE 2.34%, WBE 0.08%, SBE 1.07%, Total 3.49%**

- 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%, **Total Goal = 3.49%, Unmet MWBE Goal = 15.51%**

- **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
Denied GFE – Case Study 2

- 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
Denied GFE – Case Study 2

• 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
Approval or Denial Determination of Good Faith Efforts

Approval Process
✓ OBO notifies the Contracting Department of the approval
  • Contractors must plan on using the certified firms listed on Document 470 to meet the goal.

Denial Process
✓ OBO notifies the Contracting Department of the denial
  • The contracting department may choose to proceed with bidder or choose the next apparent responsive low-bidder.
  • The Contracting Department will notify the bidder of denial, at this time.
Appealing Denial of GFE Request
Appeals Process

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

Once the Bidder is notified of the City’s determination:

- Bidder may appeal a denial of their Good Faith Efforts by contacting OBO’s Assistant Director via mail or by email at marsha.murray@houstontx.gov
- An appeal of the denial of good faith efforts can be conducted in person or via telephone
- No new documentation will be accepted by OBO at appeal stage.
- If after review by the Assistant Director’s office, further review is requested, you may request a final review by the OBO’s Director at director.obo@houstontx.gov
- If a denial is reversed as a result of appeal, the bidder will be notified in writing.
THANK YOU