

Metro Nashville and Davidson County

Equal Business Opportunity Program Compliance

Presented by:

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John Cooper, Mayor

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Overview of Presentation

- I. The Contract Compliance Team
- II. Metro's Equal Business Opportunity Program
- III. Pre-Award Good Faith Effort Requirements
- IV. BAO's Assessment of Pre-Award Efforts
- V. Post-Award Good Faith Effort Requirements
- VI. BAO's Assessment of Post-Award Efforts
- VII. Post-Award GFE Assessment

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Metro's EBO Program

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

Equal Business Opportunity Program Goals

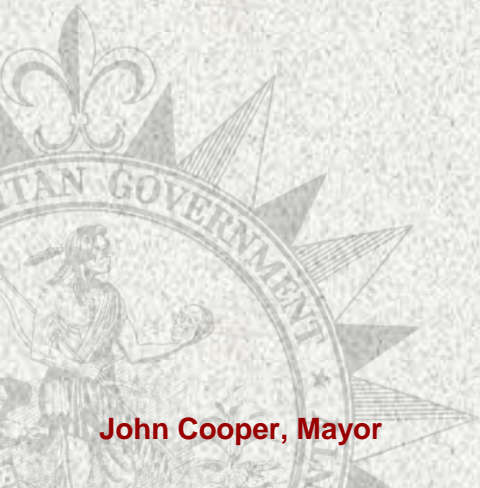
Metro Annual Aspirational Goals

- **Construction Contracts** : Includes any and all horizontal and vertical construction, including new construction, rehabilitations, remodeling and repairs.
 - M/WBE goal = 13% MBE, 12%WBE
- **Non-Professional Services Contracts**: Encompasses the procurement of advertising, printing, non-construction repairs and maintenance, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfiche and microfilm, courier, storage, travel, consulting and other non-professional services.
 - M/WBE goal = 13% MBE, 12%WBE
- **Professional Services Contracts**: Includes the purchase of any or all services covered by Section 4.08.080 which applicable selection criteria may require a participant to possess a license or other certificate of competency such as accounting, auditing, architectural, and engineering.
 - M/WBE goal = 24% MBE, 16%WBE
- **Good Contracts**: Any and all products, supplies, equipment or commodities.
 - M/WBE goal = 10% MBE, 11%WBE

Equal Business Opportunity Program Goals

Contract – Specific/Project Goals

- Individual projects will have subcontracting participation goals assigned based on the relevant market availability of certified MWBEs and divisibility of the work to be preformed.



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What is Compliance

- Means the condition existing when a Participant has met the requirements of this EBO Program



What is Non-Compliance

- Means the condition existing when a Participant has **failed** to meet the requirements of this EBO Program



Compliance Determination

- Metropolitan Government of Nashville and Davidson Count MBE/WBE compliance is determined under Ordinance No. BL2018-1419 Chapter 4.46.080 Evaluation of Bid for Program Compliance.
- Firms are compliant by:
 - Meeting the established M/WBE subcontracting goal(s) and
 - Demonstrating Good Faith Efforts (GFE)





Counting M/WBE Participation

Participation

Ensure the following:

- Firm is certified in Nashville MSA
- Firms are certified for commodity codes on Utilization Plan
- Firms are registered with Metro in iSupplier portal
- Goals are calculated using base bid only on construction projects
- Dollar amounts and/or percentages reflect bids/proposals received

Achievement of the M/WBE Goals

- ❁ MBE and WBE goals are **separate subcontracting** goals to be met individually.
- ❁ Any **excess** of the MBE or WBE Goal **can not** be used to meet a deficient MBE or WBE goal.
- ❁ Offerors must submit Utilization Plan with participation that meets or exceeds solicitation goals
- ❁ The total dollar value of the contract may be counted toward the specified goal when the Prime Contractor demonstrates a commercially useful function(s) for each proposed Subcontractor. This includes the fees and commissions charged for professional services, legal counsel, manufactures, financial consultants, and insurance agents.
- ❁ The actual portion of MBE or WBE participation in a joint venture is counted toward the goal.

Calculating Participation – Project 1

Goals: 15% MBE and 10% WBE

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

- MBE: 20%
- WBE: 10%

Does this plan meet the Goals?

YES

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Calculating Participation – Project 2

Goals: 25% MBE and 15% WBE

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

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

Does this plan meet the Goals?

NO
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Tips to Increase M/WBE Goal Attainment

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

What are Good Faith Efforts (GFE)?

- Good Faith Efforts: Means the voluntary actions of a participant undertaken in good faith to ensure that it does not discriminate in its contracting practices and to explain any failure to meet either an Annual Aspirational Goal or a contract/project Goal set in accordance with legislation.
- Determining Good Faith Efforts is the standard of review applied to determine an offeror's M/WBE goal compliance.
- If the submitted M/WBE subcontracting participation is less than the advertised contract goal(s), the offeror **must** submit Good Faith Effort Summary Sheets demonstrating their Good Faith Efforts.
- Good Faith Efforts information can be found by accessing the following link https://docs.google.com/document/d/1wmpd6CDPSHKm_nwMD6Kn0pnqpbBF2xYH3WdkDli2sT8/edit?usp=sharing.

BAO's Assessment

- ☀ Good Faith Efforts are those that one could reasonably expect a vendor to accomplish if the vendor were actively and aggressively attempting to obtain M/WBE participation to meet the contract goals.
- ☀ Good Faith Efforts are evaluated when a first ranked bidder **FAILS** to meet the established M/WBE subcontracting participation goal.
- ☀ BAO staff reviews all documents provided by the offeror with bid submission in making a Good Faith Efforts determination.
- ☀ Offers will be contacted by BAO **only** for clarification purposes, when necessary..

Good Faith Efforts: Pre-Award

Elements include:

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



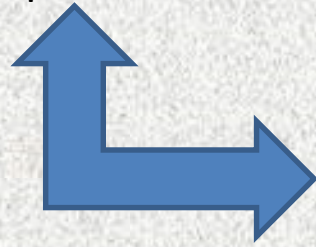
This is not a complete list.

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

Requirements for GFE Submission to Metro

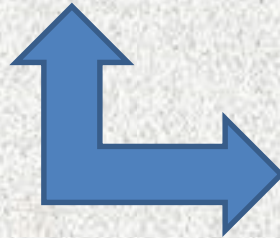
Explanation

- Explain why offeror failed to meet established M/WBE goal.



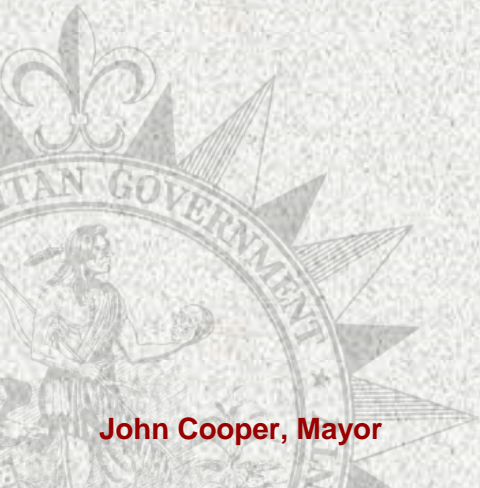
Supporting Documentation

- Provide supporting documentation that will demonstrate Good Faith Efforts



Submit with Bid

- Only documentation submitted with bid will be considered.





SAMPLES



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Sample 1 – Approved Good Faith Efforts

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

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

Sample 1 – Approved Good Faith Efforts

Business Assistance Office evaluated documentation and verified details

- Vendor demonstrated Good Faith Efforts by providing documentation, which are as follows:
 - Attended pre-offer meeting
 - Identified and designated portions of the work to be performed by MWBEs to increase the likelihood of meeting the contract goals by soliciting bids in various scopes.
 - Notified a reasonable number of certified MWBEs.
 - Solicited MWBEs within a reasonable amount of time by providing written notification to MWBEs more than 7 business days before bid submission.
 - Provided documentation of advertisement

Sample 2 – Failed Good Faith Efforts

A **Building Renovation** project with an advertised M/WBE Goal 20% MBE & 15% WBE

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

Sample 2 – Failed Good Faith Efforts

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

Offeror did not demonstrate a genuine effort to comply with Metro's Equal Business Opportunity Program Good Faith Efforts:

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



Post-Award Good Faith Efforts



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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 M/WBE goal or fails to use all of the approved M/WBE subcontractors on their Statement of Utilization Form, the Prime must demonstrate that their failure was due to so based on circumstances that they could not reasonably control.
- ☀ Metro's Procurement Codes and Procurement Regulations outline those factors that will be considered in the assessment of Good Faith Efforts.

Documenting Good Faith Efforts

- Submit in writing all efforts made to comply with the goal.
- Execute and submit required subcontracting agreements outlining terms of engagement (Letter of Intent to Perform as Subcontractor/Joint Venture) to BAO within two (2) days of award notification.
- Maintain for a minimum of three (3) years after completion of the contract and final payment, detailed records of all correspondence and responses including communication made and received regarding Metro solicitations.
- Contact BAO for assistance if you are experiencing challenges meeting the goal.
- When possible, provide Sub-Consultants/Subcontractors with advance notice when they will be needed for project.
- Document opportunities that exist with all additional work and your efforts to solicit MWBEs.

Documenting Good Faith Efforts Cont'd.

- Designate an M/WBE liaison
- Provide up-to-date M/WBE Utilization Schedules and promptly report payments to the B2GNow system.
- Genuinely attempt to resolve disputes with M/WBEs.
- Utilize all M/WBEs on the approved Statement of M/WBE Utilization plan unless a substitution is approved by BAO.
- Request a deviation when needed and make a Good Faith Efforts to replace M/WBE firms with other M/WBE FIRMS.
- Promptly respond to inquiries from the BAO regarding M/WBE participation.

Documenting Good Faith Efforts Cont'd.

- Provide information that is factually accurate and free of material misrepresentation.
- Attend all meetings and mediations requested by Metro.
- Notify BAO of the effect of scope of work changes on Statement of M/WBE Utilization Plan.
- Make sure M/WBE firms are performing a **Commercially Useful Function**.



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Failure to make Post-Award Good Faith Efforts

Failure to Make GFE: Common Observations

- ✿ Failure to respond to Metro inquiries (letters, emails, calls) regarding M/WBE utilization.
- ✿ Failure to execute required subcontracting agreements outlining the terms of engagement.
- ✿ Listing M/WBEs for goal credit without notifying them.
- ✿ Failure to submit deviation request for a change in M/WBE Utilization Plan.
- ✿ Failure to fully report payments made to M/WBEs.
- ✿ Self-performing work intended for M/WBEs, without BAO approval.

Failure to Make GFE: Common Observations Cont'd.

- ❁ Failure to understand how M/WBEs will perform on the contract (no Commercially Useful Function)
- ❁ Failure to notify MWBEs and BAO promptly of any challenges that will affect M/WBE utilization.
- ❁ Failure to look for goal credit opportunities on additional work authorized.
- ❁ Failure to look for goal credit opportunities when a change order affects the contract.
- ❁ Failure to document changes that affect goal credit MWBEs.



Final Post-Award GFE Assessment

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Assessment of Post-Award Good Faith Efforts

- Good Faith Efforts begin when the contract is awarded, so start documenting the things you did and submit all relevant documentation of your efforts to BAO by the end of contract.
- Prime's efforts to meet M/WBE contract goal(s) will be assessed at the end of the project.
- Not making sufficient good faith effort to meet the goal may affect whether Metro awards future contracts to your company.
- Failure to make Good Faith Efforts will result in an **“unsatisfactory”** compliance rating.
- Unsatisfactory ratings may impact award of future projects if a sanction is imposed.

Ratings For M/WBE Goal Compliance


Outstanding

-  Prime exceeded contract goal(s) and made GFE to utilize all approved M/WBEs.


Satisfactory

-  Prime met contract goal(s).

Satisfactory Due to Good Faith Efforts

-  Prime failed to meet contract goal(s), but made GFE to utilize all approved M/WBEs.

Unsatisfactory

-  Prime failed to make GFE to utilize all approved M/WBEs and fell short of the goal(s).

Sample 1 – Outstanding Rating

Professional Services Contract Goal was 10% MBE and 8% WBE

Prime achieved 12% MBE and 9% WBE

- ☀ Prime utilized all approved certified M/WBE firms to full capacity and beyond
- ☀ Prime provided up-to-date utilization schedules



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Sample 2 – Satisfactory (GFE) Rating

Construction Contract Goals were 20% MBE and 5% WBE

Prime achieved 18% MBE and 5% WBE

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

- All MBE and WBE firms from utilization form were utilized on the contract, but their dollar values decreased based on a scope change
- Prime followed substitution process to remove a goal credit M/WBE subcontractor and add another
- Prime provided up-to-date utilization schedule

Sample 3 – Unsatisfactory Rating Denied (GFE)

Construction Contract Goals were 20% MBE and 5% WBE
Prime achieved 10% MBE and 0% WBE

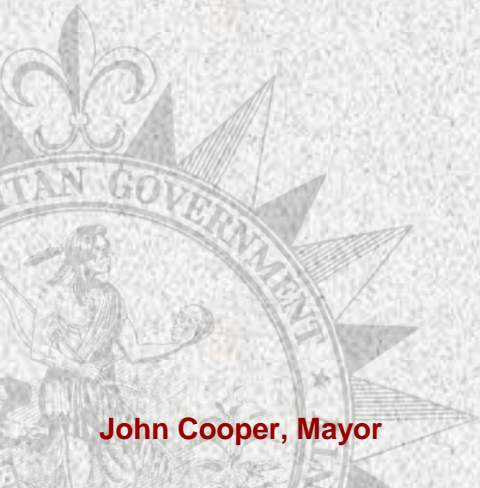
Prime **failed** to demonstrated Good Faith Efforts:

- ☀ Prime utilized all MBE firms on the contract
- ☀ Prime did not utilize the WBE firm listed on the contract
- ☀ Prime stated WBE firm removed themselves from project; however their was no documentation or effort to replace WBE participation.
- ☀ Prime received unsatisfactory rating due to contractor's failure to make Good Faith Efforts to meet the WBE goal.

Challenging an “Unsatisfactory” Rating

- BAO evaluates the M/WBE compliance of Primes before final clearance and a final payment request is made to Metro Council on projects.
- After evaluation of Prime’s Good Faith Efforts to meet the M/WBE goal, Primes are notified of their compliance rating via letter.
- Primes who do not agree with their ratings have 14 business days to challenge them by contacting Metro Purchasing Agent. Purchasing Agent will review all explanations and documents, then notify Primes of the final rating.
- The initial rating will become final if Prime fails to challenge it within 14 days.

Questions



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