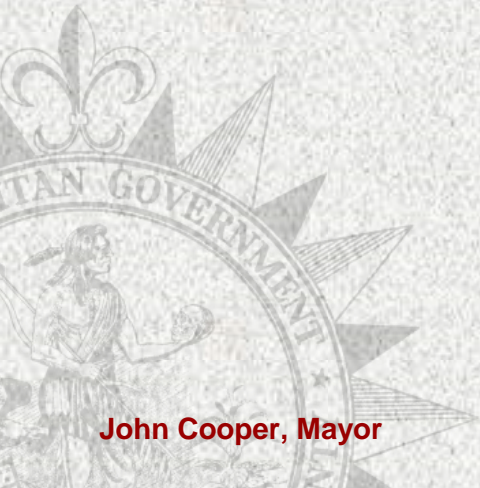


Metro Nashville and Davidson County

Equal Business Opportunity Program Good Faith Efforts



John Cooper, Mayor

EBO

Metro
Procurement Nashville

Overview of Presentation

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

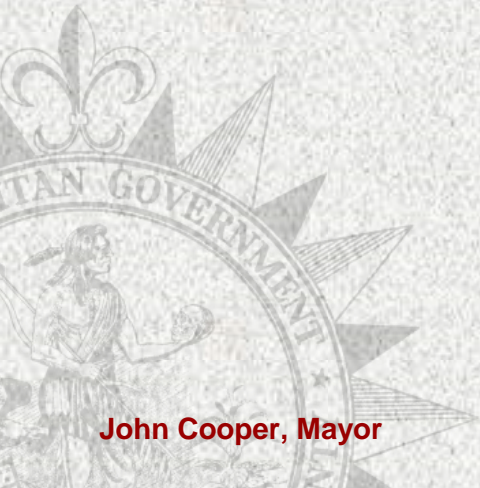


Metro's EBO Program

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

What are Good Faith Efforts?

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



Good Faith Efforts: Pre-Award

Elements include:

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



This is not a complete list.

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

Good Faith Efforts

- ☀ Good Faith Efforts are a **REQUIREMENT** to be demonstrated by a successful bidder/offeror on a goal oriented contract.
- ☀ If the submitted M/WBE subcontracting participation is less than the advertised contract goal(s), the bidder/offeror **MUST** submit Good Faith Effort Summary Sheets demonstrating their Good Faith Efforts with their bid.

Evidence of a genuine attempt to meet the contract goal!

Tips to Increase M/WBE Goal Attainment

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

Attendance

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

- Build Relationships
- Clarity on technical & procurement aspects of the solicitation



Follow up

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

Small, Minority, and Woman Owned Business Lists and Forms

Below are instructions for generating a list of approved Small, Minority, Woman, and Service Disabled Veteran Owned Businesses that are registered with Metro.

If you are aware of other businesses that you believe meet our [Small Business Eligibility Standards](#), or who are approved as a [Small, Minority, or Woman Owned Business](#) that do not appear on a generated list, you may still pursue partnership with them, but their status must be approved by Metro prior to the opening of your response. If you have any questions regarding [Small Business Status Confirmation Process](#), please contact the Business Assistance Office at 615-880-2814.

How to run an approved list

Please note that Metro provides the detail contained in any generated list as a service to offerors who desire assistance in locating potential subcontractors and suppliers, however, proposers are responsible for making contact with any vendors that are being considered for subcontract opportunities to ascertain said vendor's experience, capabilities, or capacity to perform. Additionally, offerors are responsible for ensuring that the approved status of these vendors is still valid at the time any solicitation response is submitted to Metro.

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

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

Important

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

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

Search by Certification Type

Search by Certification Type	
Certifications	<input checked="" type="checkbox"/> Disadvantaged Business Enterprise (DBE)
	<input checked="" type="checkbox"/> LGBT Business Enterprise (LGBTBE)
	<input checked="" type="checkbox"/> Minority Business Enterprise (MBE)
	<input checked="" type="checkbox"/> Service-Disabled Veteran Business Enterprise (SDVBE)
	<input checked="" type="checkbox"/> Small Business Enterprise (SBE)
	<input checked="" type="checkbox"/> Women Business Enterprise (WBE)

Outreach

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



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

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Dividing the Contract

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



Who is supplying the building material?



Who is pouring the concrete?

Sufficient Information About Contract

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



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

Notice and Solicitation

- ☀ Provide M/WBEs with written notice via e-mail, certified mail, fax or other documented contact regarding subcontracting opportunities.
- ☀ Solicit M/WBEs no less than 7 business days before offer submission.
- ☀ Follow up with M/WBEs to determine interest in bidding.



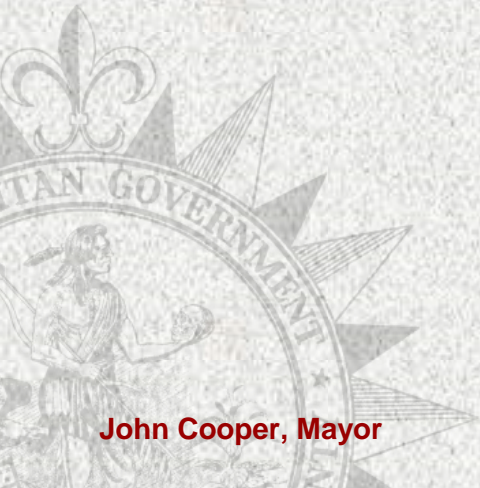
Negotiate

- 🌟 Negotiate in good faith with interested M/WBEs, and not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.



Explanation

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



Assistance

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

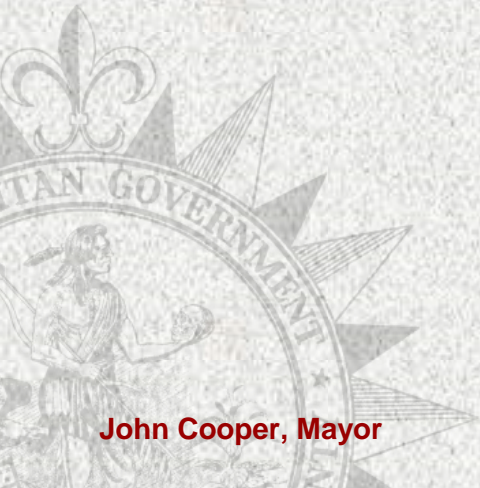




M/WBE Forms

M/WBE Utilization & Schedule Forms

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



M/WBE Utilization Form

Statement for M/WBE Utilization

Proposer's/Firm's Name: _____	Proposer's Phone #: _____
Solicitation Title: _____	Proposer's Email Address: _____
Solicitation #: _____	Total Bid Amount: _____
EBO Goal (%): _____ MBE % _____ WBE %	EBO Goal Met? (Y/N) _____

The following MWBE* subcontractor(s)/supplier(s) will be utilized for the performance of this project:

#	MBE/WBE Firm Name	MBE/WBE Firm Address	Phone/E-Mail	Certificate Type	Group Type	Code # UNSPS/NAICS	Description of Work	MBE/WBE Dollars (\$)	Percent of Total Contract
1				Select ▾	Select ▾				
2				Select ▾	Select ▾				
3				Select ▾	Select ▾				
4				Select ▾	Select ▾				
5				Select ▾	Select ▾				
6				Select ▾	Select ▾				
7				Select ▾	Select ▾				
TOTAL:									

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

Authorized Representative (Printed Name/Title/Signature) _____	Date _____
---	---------------

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

For Internal Office Use ONLY

Has Prime Complied with EBO Goal?	If No, Good Faith Efforts Met?
BAO Representative: _____	Date: _____
Total MBE Subcontracting _____ % \$ _____	
Total WBE Subcontracting _____ % \$ _____	
Total MBE/WBE Participation: _____ % \$ _____	

M/WBE Utilization Schedule Form



M/WBE Utilization Schedule

Status as of: 12-Aug
 Project Name: Nolensville Pike Road Paving & Drainage Design
 RFQ #: 999999
 Company Name: Watson Engineering, Inc.

Month	Total	Frye Surveying	JR Shire, Inc.	Carr & Associates	Burt Engineering
Jan-20	\$31,000	\$8,000	\$9,000	\$8,000	\$6,000
Feb-20	\$29,500	\$1,500	\$12,000	\$12,000	\$4,000
Mar-20	\$41,000	\$4,000	\$12,000	\$15,000	\$10,000
Apr-20	\$23,000	\$3,000	\$8,000	\$8,000	\$4,000
May-20	\$35,000	\$15,000	\$8,000	\$8,000	\$4,000
Jun-20	\$16,000	\$0	\$0	\$12,000	\$4,000
Jul-20	\$3,000	\$0	\$0	\$0	\$3,000
Total Dollar Value	\$178,500	\$31,500	\$49,000	\$63,000	\$35,000
Total %	100%	17.64%	27.45%	35.29%	19.60%



Assessing Your Utilization

Achievement of the M/WBE Goals

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

M/WBE Directory

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

- Visit BAO website at <https://www.nashville.gov/Finance/Procurement/Business-Assistance-Office/SMWBE-Lists-and-Forms.aspx> and click **How to run an approved list**

- Visit B2GNow website at <https://nashville.diversitycompliance.com/> and click **information for Vendors**

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- *Please note that in accordance with 49 CFR Part §26.73 the issue of whether a firm performs a Commercially Useful Function (CUF) is not reviewed at the time of certification. DBE firms must be certified with the appropriate NAICS and description. In order for the prime to receive credit for DBE participation toward the assigned contract goal, the DBE must be performing a CUF in accordance with 49 CFR Part §26.55.*

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

Search by Certification Type

Certifications	<input checked="" type="checkbox"/> Disadvantaged Business Enterprise (DBE)
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	<input checked="" type="checkbox"/> Women Business Enterprise (WBE)



Counting M/WBE Goal Credit

Calculating Participation – Project 1

Goals: 15% MBE and 10% WBE

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

- MBE: 20%
- WBE: 10%

Does this plan meet the Goals?

YES

EBO

Calculating Participation – Project 2

Goals: 25% MBE and 15% WBE

These are separate goals to be met individually!

Bidder's Proposed Participation Plan:

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

Does this plan meet the Goals?

NO
EBO



When do you demonstrate Good Faith Efforts?

BAO's Review of Good Faith Efforts

- ❁ If the bidder/offeror's utilization provides for M/WBE participation less than the Contract Goal, offer must also submit:
 - ❁ Good Faith Efforts Summary Sheets
- ❁ Good Faith Efforts Summary Sheets are evaluated when a first ranked bidder **FAILS** to meet the established M/WBE subcontracting participation goal.
- ❁ BAO staff reviews all documents provided by the bidder/offeror with bid submission in making a Good Faith Efforts determination.
- ❁ Offers will be contacted by BAO **only** for clarification purposes, when necessary..

Good Faith Efforts Summary Sheets

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

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY M/WBE GOOD FAITH EFFORTS SUMMARY SHEETS

THIS DOCUMENT MUST BE ACCURATELY COMPLETED, SIGNED AND SUBMITTED
(Due With The Bid Submission, If Applicable)

Project Name and # [if applicable]:		Project Description:	
Company Name:	Date Submitted:	Total Contract Value:	
Address:		Federal Tax ID#	
Contact Person:	Email:	Phone #:	

GOOD FAITH EFFORTS SUMMARY SHEET CHECKLIST

#	Bidder Action(s)	Yes	No	Pass/Fail
4.	Evidence of Justifiable Bid Rejection: If participation of specific MBE/WBEs was considered, the bidder did not reject MBE/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.	<input type="checkbox"/>	<input type="checkbox"/>	▼

For each MBE/WBE firm contacted, list the name(s) and all information requested below related to the above project. If additional space is required, this form may be duplicated.

Company Name/Address/Contact Person/Phone Number/Email	If Bid(s) Rejected...why?	Provide detailed information.

It is hereby certified that the above firms were contacted and offered an opportunity to respond on the above project. We further certify that the above statements are a true account of all firms' responses to our solicitation. Copies of all bids and/or quotes will be made available upon request.

Signature: _____ Print Name: _____ Title: _____



Evaluation and Assessment of GFE

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Evaluation and Assessment

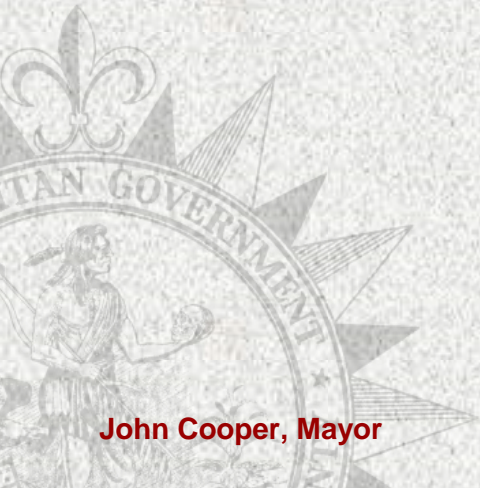
GFE are evaluated by the BAO on a case-by-case basis in making determination whether a bidder or contractor is in compliance with this program.

- ☀ Efforts employed by a bidder or contractor should be those that one could reasonably expect a bidder or contractor to make if bidder were actively and aggressively attempting to obtain M/WBE participation to meet the contract goal.
- ☀ A bidder/offeror's Good Faith Efforts must be demonstrated at bid submission
- ☀ **Additional supporting documents or justifications cannot be submitted to the BAO for review or consideration after submission of bid.**
- ☀ Contractors will be contacted by the BAO only for clarification purposes on a case-by-case basis.

Approved GFE

Approved Good Faith Efforts usually will consist of:

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



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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

Failed GFE

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

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

FAILED

It is important to address Goal challenges at Metro's Pre-offer/Pre-proposal meetings and follow up with online discussion questions.

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; bidder/offeror only signed and dated the form.
 - Justification: bidder/offeror indicated that they will be self-performing most scopes of work. Offer stated the MBE & WBE quotes received for the remaining scopes did not meet the contract goals. bidder/offeror stated if awarded the contract, they will continue to search for M/WBE subcontractors and vendors to perform larger scopes of work.
 - Good Faith Efforts Summary Sheets: bidder/offeror indicated that the scopes of work are subdivided by UNSPSC Code to increase scopes and participation. bidder/offeror indicated that large scopes of work were evaluated for joint venture and possible partnership as well multiple participation from suppliers and subcontractors. Offer indicated that request for quote was posted on line and sent email.

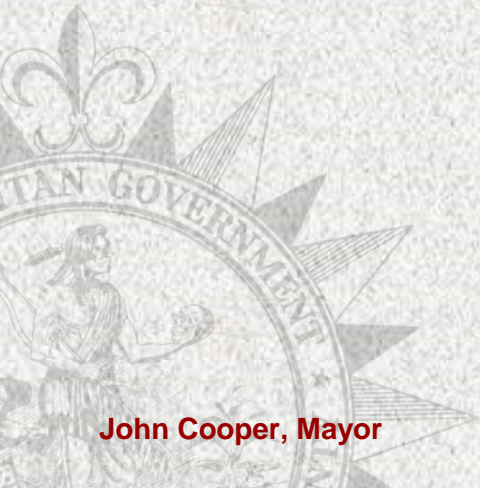
Sample 2 – Failed Good Faith Efforts

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

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

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

Questions



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