

Good Faith Efforts Review

If goals are not met, SMBR will examine the MBE/WBE Compliance Plan and the Good Faith Efforts documentation submitted with the MBE/WBE Compliance Plan to ensure that the Bidder made Good Faith Efforts to meet the project goals or subgoals. In determining whether the Bidder has made Good Faith Efforts, SMBR will consider, at a minimum, the Bidder's efforts to do the following:

1. Solicit certified MBE/WBE subcontractors with a Significant Local Business Presence (SLBP) and request a response from those interested subcontractors who believe they have the capability to perform the work of the contract through at least two reasonable, available, and verifiable means. The Bidder must solicit this interest more than seven (7) business days prior to submission of the MBE/WBE Compliance Plan to allow sufficient time for the MBEs or WBEs to respond. (The date bids/proposals are due to the City should not be included in the seven day solicitation criteria.) The Bidder must state a specific and verifiable reason for not contacting each certified Firm with a significant local business presence.
2. Provide interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the contract, including addenda, in a timely manner, to assist them in responding and submitting a proposal.
3. Negotiate in good faith with interested MBEs/WBEs that have submitted bids/proposals to the Bidder. An MBE/WBE that has submitted a bid to a Bidder but has not been contacted within five (5) business days of submission of the bid may contact SMBR to request a meeting with the Bidder. Evidence of good faith negotiation includes the names, addresses, and telephone numbers of MBEs/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs/WBEs to perform the work. Bid shopping is prohibited.
4. Select portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the MBE/WBE goals or subgoals will be met. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MBE/WBE participation, even when the Bidder might otherwise prefer to perform these work items with its own forces.
5. Publish solicitation notice in a local publication (i.e. newspaper, trade association publication, or via electronic/social media).
6. Use the services of available community organizations; minority persons/women consultants' or groups in the applicable field for the type of work described in this solicitation; local, state, and federal minority persons/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of MBEs/WBEs.
7. Seek guidance from SMBR on any questions regarding compliance with this section.

Section 9: Pre-Award Compliance

9.1 Good Faith Efforts

9.1.1 A bidder/proposer responding to a solicitation on a project for which Annual Participation Goals, or Project Participation Goals, have been established must meet the goals or demonstrate its good faith efforts to do so. The bidder/proposer can meet this requirement by either:

- A) Documenting commitments for participation by MBEs and WBEs sufficient to meet the goal(s); or,
- B) Documenting good faith efforts to meet the goal(s). The bidder/proposer must show that it took all necessary and reasonable steps to achieve the goal(s), which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain MBE or WBE participation, even if they were not fully successful. A bidder or proposer need not actually meet a contract goal (i.e., obtain a specified amount of MBE and/or WBE participation) in order to be awarded a contract if the bidder/proposer documents in their response to a solicitation with supporting evidence they have made adequate good faith efforts. SMBR is specifically prohibited from ignoring bona fide good faith efforts.

9.1.2 The efforts employed by the bidder/proposer must be those that one could reasonably expect a bidder/proposer to take if the bidder/proposer were actively trying to obtain MBE and WBE participation sufficient to meet the MBE and WBE contract goals. Mere pro forma efforts are not good faith efforts to meet the MBE and WBE contract goals.

9.1.3 The specific requirements that SMBR will consider as part of the bidder's/proposer's good faith efforts to obtain MBE and WBE participation are identified in City Code §§ 2-9A-21, 2-9B-21, 2-9C-21 or 2-9D-21.

9.1.4 In certain cases, SMBR, rather than the bidders, will initially notify subcontractors of bidding opportunities, pursuant to § 2-9A-21(E) (1) of the City Code. SMBR will conduct such notifications on certain solicitations meeting the following criteria:

- A) **The solicitation is a Capital Improvement Project identified in the Capital Improvement Program or otherwise defined by the City; and**
- B) **The solicitation method is an invitation for bids.**

9.1.5 SMBR shall endeavor to make the initial notification to subcontractors required under § 2-9A-21(E)(1) of the City Code on no less than three and up to five contracts issued by the City's Capital Contracting Office within Fiscal Years 2017-2018 through 2018-2019.

SMBR shall keep the MBE/WBE and Small Business Enterprise Procurement Program Advisory Committee informed of the MBE/WBE participation levels for the contracts selected for initial notification by SMBR.

9.1.6 When SMBR undertakes the responsibility of notifying subcontractors of bidding opportunities, subcontractors must submit bids directly to bidders.

9.1.7 When SMBR makes first contact with certified subcontractors, prime contractors must still comply with all subsequent good faith effort requirements pursuant to City Code § 2-9A-21(E)(3)-(7) and these Rules.

9.1.8 If SMBR deems the pilot program effective, SMBR may extend this pilot program to the Corridor Mobility Program solicitations issued as Invitations for Bid only without the need to further amend these Rules. Effectiveness will be measured by the following:

- **Feedback received from prime contractors, subcontractors and stakeholders;**
- **Feedback from SMBR and other impacted City departments;**
- **Increased MBE/WBE participation at time of bid;**
- **Increased number of bids received by Prime contractors; and**
- **Number of violation notices issued for insufficient good faith efforts on solicitations that are part of the pilot program.**