

# M E M O R A N D U M



**SUBJECT:** Policy Memorandum No. 18-02,  
Procedures for Establishing Good  
Faith Efforts When Requesting a  
Waiver

**DATE:** April 30, 2018

**FROM:** PRMT – T. Suzette Moore

**TO:** All PRMT Personnel

**PURPOSE:**

This Policy Memorandum (PM) establishes the procedure necessary to document Good Faith Efforts when requesting the waiver of a DBE goal

**EXPIRATION DATE:**

This PM is effective immediately and remains in effect until cancelled or superseded.

**REFERENCES:**

1. Procurement Procedures Manual, Section 7.2.5, Goal Waiver / Substitution Procedures
2. 49 CFR §26.53, Good Faith Efforts Procedures

**BACKGROUND**

*Good Faith Efforts* means efforts to achieve a Disadvantaged Business Enterprise (DBE) goal, other requirements of the Washington Metropolitan Area Transit Authority's (WMATA) DBE Program or 49 CFR Part 26 which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement. Pursuant to section 7-2-5 of the Procurement Procedure Manual (PPM), a prime contractor seeking full or partial waiver must demonstrate Good Faith Efforts to meet the contract DBE goal. The evidence of Good Faith Efforts must be clear and convincing. Waiver requests must be made to the Contracting Officer (CO) and evaluated for sufficiency by the DBE Liaison Officer or his/her designee. If a prime contractor fails to submit a request for a DBE goal waiver, the proposal will be deemed non-responsive.

**POLICY**

It is the policy of WMATA to give guidance concerning the requirements for documenting Good Faith Efforts. Attached is a form which will be incorporated into the solicitation informing the vendor that it must be used when requesting a DBE waiver. **See Attachment 1.** According to 49 CFR §26.53, grantees can only award a contract, that requires a DBE goal, to a bidder/offeror who has made Good Faith Efforts to meet the goal. A Good Faith Effort is defined as one where the bidder documents that it has obtained enough DBE

Washington  
Metropolitan Area  
Transit Authority

participation to meet the goal or documents that it made adequate Good Faith Efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

In order to be responsive, a bidder must make a Good Faith Effort to meet the DBE participation goal set forth in the contract. The bidder must document the Good Faith Efforts it made in that regard. Thus, the bid submitted to WMATA must be accompanied by written documentation prepared by the bidder evidencing all of its sufficient and reasonable Good Faith Efforts toward fulfilling the goal. These efforts must be active steps and ones, which could reasonably be expected, to lead to sufficient DBE participation to meet the contract DBE participation goal. Mere pro forma efforts are *not acceptable and will be rejected* by the DBE Liaison or his designee.

Good Faith Efforts require that the bidder consider all qualified DBEs, who express an interest in performing work under the contract. This means that the bidder cannot reject a DBE as unqualified unless the bidder has sound reasons based on a thorough investigation of the DBE's capabilities. Further, the DBE's standing within its industry, membership in specific groups, organizations or associations and political or social affiliation (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the bidder's efforts to meet the contract DBE participation goal.

Additional examples of a Good Faith Effort are as follows:

1. Attendance at a pre-bid meeting, if any, scheduled by WMATA to inform DBEs of subcontracting opportunities under a given solicitation;
2. Advertisement in general circulation media, trade association publications, and minority-focused media for at least 20 days before bids are due. If 20 days are not available, publication for a shorter reasonable time is acceptable;
3. Written notification to capable DBEs that their interest in the contract is solicited;
4. Documentation of efforts to negotiate with DBEs for specific subcontracts including at a minimum:
  - a. the names, addresses, and telephone numbers of DBEs that were contacted and the date(s) of contact;
  - b. a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and
  - c. a statement explaining why additional agreements with DBEs were not reached.

5. For each DBE the bidder contacted but rejected as unqualified, the reason for the bidder's conclusion must be given such as:
- a. documentation of efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder or WMATA;
  - b. documentation of efforts to utilize the services of small business organizations, community and contractor groups to locate qualified DBEs;
  - c. documentation that the bidder has broken out contract work items into economically feasible units in fields where there are available DBE firms to perform the work;
  - d. evidence that adequate information was provided to interested DBEs about the plans, specifications and requirements of the contract, and that such information was communicated in a timely manner; and
  - e. documentation of any efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services.

#### Examples of Documenting Good Faith Efforts:

The following is a list of types of actions a bidder should take when documenting *Good Faith Efforts*. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases:

1. Solicitation/Advertisement Efforts – should include efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.
2. Negotiation Efforts – should include efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. You are encouraged to break out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation you should make plans/specifications available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your *Good Faith Effort* submittal which supports the price differential.

3. Assistance Efforts – should include efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors are encouraged to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible with prior approval. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.
4. Additional Efforts – could include any additional efforts to utilize the services of minority/women organization groups; local, state, and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

**SUBMIT WITH OFFER**

**DBE UNAVAILABILITY CERTIFICATION**

I, \_\_\_\_\_, \_\_\_\_\_, of \_\_\_\_\_  
               (Name)                      (Title)                      (Bidder)

certify that on \_\_\_\_\_ I contacted the following DBE contractor(s) to obtain offer(s) for work  
(Date)  
items to be performed on Contract Number \_\_\_\_\_

DBE Contractor	Work Items Sought	Form of Bid Sought (i.e., Unit Price, Materials and Labor Only, Etc.
----------------	----------------------	--

To the best of my knowledge and belief, said DBE contractors were unavailable (exclusive of unavailability due to lack of agreement on price) for work on this project, or unable to prepare a bid, for the following reason(s):

---

---

---

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_ was offered an opportunity to submit an offer on the above

(Name of DBE Contractor)

identified work on \_\_\_\_\_ by \_\_\_\_\_  
 . (Date) (Source)

The above statement is true and accurate account of why I did not submit an offer on this project.

(Signature of DBE Contractor)

(Title)