

**Form 1, Goods/Services, Construction/Renovation, Professional Services
 Prime Contractor or Subrecipient Certificate of Compliance
 Minority Business Enterprise (MBE) – Good Faith Effort Statement**

(To be filled out by prime contractor or subrecipients)

Project Title & Contract No: (if known) _____

The City of Toledo has established the following goals for all contracts/agreements relating to the purchase of goods/services and construction and/or renovation projects.

<u>Type</u>	<u>Goal</u>
Construction including renovations	15%
Goods and Services	10%
HUD Funds	21%

THE MBE GOAL HAS BEEN MET ON THIS PROJECT

Achievement of these goals is measured by the estimated percentage of money to be allocated to an MBE company certified by the City of Toledo.

If the **Prime Contractor or Subrecipient** cannot meet the goals established, it must demonstrate that a Good Faith Effort was undertaken. The following checklist is intended to function as a primer in making a good faith effort statement.

There are no known MBE companies that perform this work or provide this product.

Written or verbal specifications were provided to MBE companies requesting quotes. (Please attach information to this sheet that includes name of MBE companies, date quote requested and rationale for rejection of quote)

MBE companies utilized must be independent and continuing operations for profit, performing a commercially useful function. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor. Failure to meet the MBE goals and Good Faith Effort standard will be considered in determining the successful bidder.

 Company Name Contact Person (Print Name)

 Company Address Contact Person (Signature)

 Telephone No: & E-mail Date

capabilities. It is the bidder's responsibility to make a portion of the work available to MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE subcontractors and suppliers, so as to facilitate participation.

7. Maintaining evidence of such negotiations including the names, addresses, and telephone numbers of MBEs that were considered; documentation of dated written communication, fax confirmations, personal contacts, quotes provided by MBEs, 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 the firms to perform the work.

A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using MBEs is not in itself sufficient reason for a bidder's failure to meet the participation goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from MBEs if the price difference is excessive or unreasonable.

8. Making efforts to assist interested MBEs in obtaining bonding, lines of credit, or insurance required by the prime bidder.
9. Effectively using the services of available minority community organizations, minority contractor groups, local, State and Federal minority business assistance offices, including the City's Office of Affirmative Action and Contract Compliance, and other organizations that provide assistance for and placement of MBEs
10. Securing an MBE replacement for each MBE firm that will not or cannot honor a commitment to perform subcontract work or supply materials. (Similar documented affirmative action shall be taken in securing MBE and replacements as are required initially).
11. Mere *pro forma* efforts are not good faith efforts to meet the MBE contract requirements.

Commercially Useful Function

MBEs utilized must be independent and continuing operations for profit, performing a commercially useful function. "Commercially useful function" means the performance of real and actual services in the discharge of any contractual endeavor. A firm must be responsible for the execution of a distinct element of the work for which the business has the skill and expertise, with its own workforce, and the firm must carry out its responsibilities by actually performing, managing and supervising the work involved.

To perform a commercially useful function, the MBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable) and paying for the material itself. A firm does not perform a commercially useful function if its role is limited to

that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of MBE participation.

Collusion

The City will not accept collusion among the prime bidders, an MBE or any other individual, business or joint venture, or evidence of undue influence on an MBE to alter the committed quantities or its quotation.

Consideration of Other Bidders

In determining whether a bidder has made good faith efforts, the City may take into account the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the goal, but other bidders meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average MBE participation obtained by other bidders, the City may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Other Considerations

Actions taken by bidders, contractors, MBE subcontractors to fulfill the participation goal will not be deemed to have been taken in good faith if, given all relevant circumstances, the action could not reasonably be expected to produce a level of MBE participation. The action taken must be that which, given all relevant circumstances, a bidder actively and aggressively seeking, would make.

Reporting Forms

In reporting MBE participation on project bids, bidders and/or City departments and grant or loan recipients will utilize the forms below to demonstrate good faith effort.

- Each contractor will supply a list of all subcontractors when the bid is received. Any change in subcontractors after the project is awarded will be reported to the Office of Affirmative Action by the originating department and/or agency.
- All prime contractors who bid with MBE subcontractors will ensure that the below subcontractor form is completed and furnished at the time of the bid. Notice of any addition of an MBE subcontractor after the project has been awarded must be given to the Office of Affirmative Action and Contract Compliance on the appropriate MBE subcontractor form.
- The MBE Good Faith Statement must be included in all purchase orders, contracts and/or agreements executed by any department or agency.