



MBE & VSBE Goal Waiver Guidance Good Faith Effort Review & Determination

I. OVERVIEW

The State of Maryland's procurement processes allow Bidders/Offerors to request a waiver, partial or in full, if they have determined that they are unable to meet a subcontracting participation goal established for Minority Business Enterprise (MBE), Veteran-Owned Minority Business Enterprise (VSBE), or both.

Bidders/Offerors who make a waiver request must submit the appropriate forms with the bid/proposal package and fully document Good Faith Efforts to meet the established participation goal(s). Waiver Guidance along with the applicable forms, is provided in the solicitation package. Minority Business Enterprise (MBE) Forms – *Attachment D Series*
Veteran-Owned Minority Business Enterprise (VSBE) Forms - *Attachment E Series*

At the time you begin reviewing the waiver request, the bid/proposal should have been determined to be responsive or reasonably susceptible of being selected for award, respectively, through the validation of the Utilization Affidavit and Prime/Subcontractor Participation Schedule(s) submitted by the bidder/offeror. (If this affidavit was not submitted, the bid/proposal should have already been deemed non-responsive or not reasonably susceptible of being selected for award, respectively.)

II. BEST PRACTICES FOR EVALUATING GOOD FAITH EFFORTS

The following Best Practices shall be applied in order to make a waiver request determination:

1. The waiver request is evaluated when the bidder's/offeror's bid/proposal is being recommended for award. This is part of the determination of the bidder's/offeror's responsibility.
2. Evaluate all elements before making a final determination of responsibility. The Procurement Officer (PO) has the authority to request additional documents for items that are curable. Seek

guidance from your Assistant Attorney General (AAG) or MBE or VSBE liaison when necessary.

3. The PO will either grant the waiver request or deny the waiver request. Do not grant a waiver without proper justification.
4. For solicitations that contain both MBE and VSBE participation goals, the waiver request determination process must be performed separately for each category of subcontractors.
5. The PO should be familiar with the instructions provided to the vendors regarding Waiver Guidance as this is the basis of your evaluation.
6. Verify that the Unavailability Certificate has been completed in full. It must be signed by either the subcontractor(s) or prime contractor(s).
7. Thoroughly review all accompanying documentation to support the waiver request.
8. **Identified Items of Work** – Review all items identified by the bidder/offeror for subcontracting opportunities and compare them to subcontracting items identified by the Procurement Review Group (PRG).
 - a. The PO should evaluate both lists of subcontracting opportunities to determine if the bidder/offeror made a reasonable effort to identify substantial opportunities for subcontracting using what was provided by the PRG or additional items of work identified by the bidder/offeror.
 - b. If the paperwork identifies that work was not made available to an MBE or VSBE vendor, the PO must determine if a reasonable justification has been provided. Self-performance is not a reasonable justification for not offering subcontracting opportunities to an MBE or VSBE.
9. **Identified Firms and Record of Solicitations** – Review all items identified by the bidder/offeror of firms solicited to provide quotes and compare them to subcontracting items identified by the PRG.
 - a. Fully evaluate the information provided, expecting a comparable number of firms to have been contacted. Low or limited interactions does not demonstrate a good faith effort.
 - b. The dates identified for initial and follow-up communication should be prior to the bid/proposal due date. This timing is relevant to the evaluation.
10. **Additional Information Regarding Rejected Quotes** – Review all items identified by the bidder/offeror for subcontracting opportunities and compare them to subcontracting items identified by the PRG. Thoroughly review the reason(s) why a quote was rejected.
 - a. If the bidder/offeror obtained quotes from “non” MBEs/VSBEs, the information provided may be used to determine “reasonable” pricing.
 - b. Utilizing only “non” MBEs/VSBEs does not demonstrate a good faith effort.

- c. Self-performing instead of using an MBE/VSBE vendor(s) or non-MBE/VSBE vendor(s) does not demonstrate a good faith effort.
- d. Bidder/offeror must demonstrate a substantial price differentiation in order to use price as a reason for not including an MBE/VSBE subcontractor.
- e. Bidder/offeror must show evidence of negotiating with interested MBE/VSBE subcontractors to perform the work and why additional agreements could not be reached.

III. GOOD FAITH EFFORT DETERMINATION

Based on a thorough review and analysis of the Good Faith Efforts Documentation to Support the Waiver Request, make one of the following determinations:

1. The bidder/offeror **made a good faith effort** to meet an established socioeconomic subcontracting goal. The final determination is to **accept and approve the waiver request**.
2. The bidder/offeror **did not make a good faith effort** to meet an established socioeconomic subcontracting goal. The final determination is to **deny the waiver request** and reject the bid as not responsive or reject the proposal as not reasonably susceptible of being selected for award.
3. **Is it unclear whether the bidder/offeror made a good faith effort** to meet an established socioeconomic subcontracting goal. This is an initial waiver request determination and will require communication with the bidder/offeror as noted below before making a final waiver request determination.

IV. GRANTING OF THE WAIVER BY THE AGENCY HEAD

A waiver may be granted only upon a reasonable demonstration by the bidder/offeror that MBE/VSBE subcontract participation was (1) unable to be obtained or was unable to be obtained at a reasonable price, and (2) the Agency Head or Designee determines that the public interest is served by a waiver.

1. When the final determination is to **accept and approve the waiver request** (Good Faith Effort Determination #1), the PO must write a Procurement Officer's Determination (POD) that documents why the waiver request was accepted by listing the reasons for the determination.
2. This POD must be signed by the PO and the Agency Head or Designee.
3. The POD should be kept in the procurement file with copies provided to the Agency's MBE/VSBE liaison and the Governor's Office of Small, Minority & Women Business Affairs (GOSBA).

V. COMMUNICATION WITH THE BIDDER/OFFEROR

The PO shall inform the bidder/offeror of the waiver request determination in writing via email (or through eMMA). GOSBA shall be copied on all ***final waiver request determination notices*** to the bidder/offeror.

MBE Waiver Determinations: compliance.gosba@maryland.gov

VSBE Waiver Determinations: vsbe.gosba@maryland.gov

1. When **it is unclear whether the bidder/offeror made a good faith effort** (Good Faith Effort Determination #3 above), the bidder/offeror is notified by the PO of the initial waiver request determination and asked for additional documentation via a Cure Letter.
 - a. The initial waiver request determination requires communication with the bidder/offeror to submit additional documentation to support the waiver request.
 - b. The bidder/offeror should be informed that the waiver request cannot be approved until additional documentation, in response to the Best Practices Sections 8, 9, and/or 10 above, wherever the bidder/offeror did not provide enough documentation of their outreach and/or communication efforts to the MBE or VSBE community. *(It could be one section or more that requires more information to be provided by the bidder/offeror.)*
 - c. The Cure Letter should include a due date for submitting the additional documents.
 - i. If the bidder/offeror does not submit documents by the due date, the bidder/offeror may be determined to be not responsible, and the bid/proposal rejected.
 - ii. If the bidder/offeror does submit documents by the due date, the PO should review the new documents following the guidelines above in the Best Practices Sections 8, 9, and/or 10 and make a final determination on the waiver request.
 - d. After a thorough review and analysis of the additional Good Faith Efforts Documentation to Support the Waiver Request, the PO should **make a final determination about the bidder's/offeror's good faith effort** under Good Faith Effort #1 or #2 above.

2. When the final determination is to **accept and approve the waiver request** (Good Faith Effort Determination #1) and **the Agency Head or Designee has granted the waiver**, the PO shall notify the bidder/offeror of the approval of the full or partial MBE/VSBE waiver request and that the bid/proposal is being recommended for award. Include GOSBA on the final waiver request determination notice to the bidder/offeror.

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VSBE Waiver Determinations: vsbe.gosba@maryland.gov

The following sample text may be used to communicate this determination to the bidder/offeror:

IFB/RFP #: _____

Dear (Bidder/Offeror Contact Name),

This is to inform you that your request for a (full or partial) waiver of the MBE/VSBE participation goal for the above referenced IFB/RFP is approved. After reviewing the submitted documentation, it was determined that sufficient evidence was provided to support that good faith efforts were made in identifying MBE/VSBE firms that would be able to provide subcontracting opportunities for work on this contract.

Accordingly, your (date of) bid/proposal is being recommended for award.

3. When the final determination is to **deny the waiver request** (Good Faith Effort Determination #2), the PO shall notify the bidder/offeror of the denial of the full or partial MBE/VSBE waiver request and that the bid/proposal is being rejected from competition. Include GOSBA on the final waiver request determination notice to the bidder/offeror.

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VSBE Waiver Determinations: vsbe.gosba@maryland.gov

The following sample text may be used to communicate this determination to the bidder/offeror:

IFB/RFP #: _____

Dear (Bidder/Offeror Contact Name),

This is to inform you that your request for a (full or partial) waiver of the MBE/VSBE participation goal for the above referenced IFB/RFP is denied. After reviewing the submitted documentation, it was determined that sufficient evidence was not provided to support that good faith efforts were made in identifying MBE/VSBE firms that would be able to provide subcontracting opportunities for work on this contract.

Accordingly, your (date of) bid/proposal is rejected because it is not responsive/not reasonably susceptible of being selected for award.

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1	October 17, 2022	Original Version