

### **Good Faith Efforts to achieve MBE participation**

To determine whether a vendor, consultant or prime contractor has a good faith reason for failing to meet the minimum 10% MBE participation requirement pursuant to RIGL 37-14.1, the following factors, amongst others, may be considered. The efforts employed by the vendor, consultant, or prime contractor should be those that one could reasonably expect if the firm were actively and aggressively trying to obtain MBE participation sufficient to meet the minimum MBE participation requirement. Mere *pro forma* efforts are not good faith efforts to meet the MBE participation requirement.

- (1) Whether the vendor, consultant or prime contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the state contracting authority to inform MBEs of contracting or subcontracting opportunities;
- (2) Whether the vendor, consultant, or prime contractor advertised in general circulation, trade association, and minority focus media concerning the subcontracting opportunities;
- (3) Whether the vendor, consultant, or prime contractor provided written notice to a reasonable number of specific MBEs that their interest in a contract was being solicited, in sufficient time to allow the MBEs to participate effectively;
- (4) Whether the vendor, consultant, or prime contractor followed up initial solicitations of interest by contacting MBEs to determine with certainty whether the MBEs were interested;
- (5) Whether the vendor, consultant, or prime contractor selected portions of work to be performed by MBEs in order to increase the likelihood of meeting MBE participation requirements (including, where appropriate, breaking down contracts into economically feasible units to facilitate MBE participation even when the prime contractor might otherwise prefer to perform these work items with its own forces);
- (6) Whether the vendor, consultant, or prime contractor provided interested MBEs with adequate information about the plans, specifications and requirements of the contract;
- (7) Whether the vendor, consultant, or prime contractor negotiated in good faith with interested MBEs; (Evidence of such negotiation may include, but not be limited to, the names, addresses, and telephone numbers of MBEs 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 to perform the work.)
- (8) Whether the vendor, consultant, or prime contractor made suggestions to interested MBEs to assist them in obtaining bonding, lines of credit, or insurance required;
- (9) Whether the vendor, consultant, or prime contractor effectively used the services of

available minority community organizations, minority contractors' groups, local, State and Federal minority business assistance offices, including the RI MBE Compliance Office; and other organizations that provide assistance in the recruitment and placement of MBEs.

(10) A vendor 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 MBE participation requirement, as long as such costs are reasonable. Also, the ability or desire of a vendor, consultant, or 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. Firms are not, however, required to accept higher quotes from MBEs if the price difference is excessive or unreasonable.

(11) Not rejecting MBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The firm's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the vendor's efforts to meet the MBE participation requirement.

(12) In determining whether a vendor, consultant, or prime contractor has made good faith efforts, you may take into account the performance of other bidders in meeting the participation requirement. For example, when the apparent successful bidder fails to meet the requirement, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the requirement.