

BUSINESS SERVICES DEPARTMENT BUSINESS ENTERPRISE & COMPLIANCE PROGRAM (BECP) SBE PROGRAM PROVISIONS

PROJECT GOAL

The City of Tucson's Small Business Enterprise Participation goal for this project is as follows:

% SBE – Provided by BECP

In consideration of the SBE goal on this project, the City identified the following trade areas as potential subcontracting opportunities to meet the goal, however, the Contractor may elect to meet the goal utilizing any subcontracting opportunity they deem appropriate.

List trade categories – Provided by BECP

I. SMALL BUSINESS ENTERPRISE REQUIREMENTS

A. DEFINITIONS

Bidder - A firm who submits a bid or quote on an individual project which conforms in all material respects to the requirements set forth in the solicitation, including compliance with any SBE participation requirements.

Certified Small Business Enterprise (SBE) – A local small business that is an independent and continuing enterprise for profit, performing a Commercially Useful Function, that has completed the application process for certification, and has met the requirements set forth in Title 49, Code of Federal Regulations, (49 CFR Part 26).

Commercially Useful Function - Is defined as the performance of real and actual services in the discharge of any contractual endeavor. An SBE subcontractor is performing a commercially useful function when it is responsible for execution of a distinct element of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved.

Contractor - The individual, partnership, or corporation who, as a result of the competitive solicitation process, is awarded a contract by the City.

Eligible Contract - Any construction, construction services or professional design services contract undertaken by the City, unless otherwise precluded by law, *provided* the estimate for construction meets or exceeds one hundred thousand dollars (\$100,000). An Eligible Contract does not include any project in which the estimated contract value is below one hundred thousand dollars (\$100,000); contracts which require a disadvantaged business enterprise goal pursuant to federal law; contracts awarded under sections 28-21 (sole source procurement), 28-22 (emergency procurement) or 28-23 (special procurement) of the Tucson Procurement Code.

Joint Venture – An association of two (2) or more persons, partnerships, corporations, business enterprises, or any combination of these entities established to form a single business enterprise but limited in scope and duration for the purpose of carrying out a business activity. The agreement establishing the Joint Venture shall be in writing. The SBE partner(s) must be responsible for a clearly defined portion of the work performed which is set forth in detail and separately from the work to be performed by the non-SBE partner and is assigned a commercially reasonable dollar value. Furthermore, the SBE's interest shall be based on sharing real economic interest in the venture, include proportionate control over management, and interest in capital acquired by the Joint Venture and interest in earnings. Only the portion of work, supplies, and/or

services attributed to the SBE, as a member of the Joint Venture, may be counted towards relevant SBE participation goals.

Small Business Enterprise (SBE) – A Minority, woman or non-Minority Owned business that meets the North American Industry Classification System (NAIC) size standard adopted by the City for the purposes of qualifying for SBE certification.

Subcontractor and Subconsultant – A person or entity that contracts to perform work or render service to a Contractor or to another Subcontractor as part of a contract with the City.

B. APPLICABILITY

The SBE program and policies are codified in Chapter 28, Article XIII of the Tucson Procurement Code. It is the responsibility of all contractors, subcontractors, vendors, suppliers and others who are interested in contracting with the City of Tucson to read and become familiar with this section of the City Code.

Only firms that are certified by the City of Tucson under Chapter 28, Article XIII of the Tucson Procurement Code, *at the time of bid opening*, are eligible to fulfill SBE goals for City of Tucson projects.

In addition to subcontractors, the Prime Contractor may use their own participation towards fulfillment of the SBE participation goal if they are certified through the City of Tucson SBE program.

SBE Firms can be found by clicking on the “Search Registered Directory” button at <https://tucsonaz.gob2g.com>. If the name of an SBE firm does not appear in the directory, it shall be the bidder’s responsibility to ascertain the certification status of the SBE and determine the eligibility of the firm to meet the established goal. For any questions regarding the SBE Program and requirements, please call (520) 837-4000 or email at ContractorCompliance@tucsonaz.gov for assistance.

C. SBE PARTICIPATION

An SBE may participate as a prime contractor, subcontractor, second-tier subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. An SBE shall be responsible for a clearly defined portion of the work to be performed.

D. SBE GOALS

To satisfy SBE goals, a certified SBE must perform a commercially useful function, i.e., must be responsible for a clearly defined portion of the work and must carry out its responsibility by actually performing, managing and supervising the work. Bidders may meet the SBE project goals through the following methods:

Prime Contractor Participation – SBE prime contractors may use their own participation towards fulfillment of the SBE participation goals.

Subcontractor Participation - The bidder may utilize one or more certified SBE subcontractors to satisfy its SBE participation commitment and may claim the value of the commercially useful function to be performed by such subcontractor(s) to obtain credit toward the satisfaction of the applicable goal.

1. Bidders who utilize certified SBE firms whose participation are included in Force Account items, Allowances or in a Cost Reimbursement type contract, shall establish a signed contract value with the SBE firm and may only take credit for the dollar value of that contract towards satisfying its SBE commitment in their proposed SBE plan. The dollar value must be a specific amount based on anticipated work calculated by the subcontractor and is not reliant on any estimated values that may be listed in the bid schedule and cannot be specified as a range.

2. If a certified SBE subcontractor enters into second tier subcontracts consistent with the standard industry practices, such SBE subcontractor is performing a commercially useful function. If an SBE subcontractor subcontracts a significantly greater portion of its work to a non-SBE than would be expected by standard industry practices, it shall be presumed that the SBE is not performing a commercially useful function. Therefore, bidders are required to identify and report the use of any second tier subcontractors on the project.
3. Credit will be given when a SBE subcontracts part of the work of its contract to another firm only if the SBE's subcontractor is itself a SBE.

Supplier Participation - The bidder may contract with one or more certified SBE suppliers, provided that the supplier is a regular dealer of the materials supplied, to obtain credit toward SBE goals. The value of the commercially useful function to be performed by such SBE's and credited toward satisfaction of the applicable SBE goals is as follows:

1. If an SBE supplier manufactures the goods supplied, one hundred percent (100%) of the contract amount is credited towards the applicable SBE participation goal.
2. If an SBE supplier is a wholesaler warehousing the goods supplied or is a manufacturer's representative, the total contract amount is credited toward the established SBE goal; however, only twenty-five percent (25%) of the total SBE project goal may be met in this manner.
3. If an extraordinarily large proportion of a contract price is for equipment or supplies, a lower project goal may be set than otherwise would be required, or the twenty-five percent (25%) limit for suppliers may be increased, or a combination of these two methods may be utilized.

Joint Venture - Where a bidder engages in a joint venture to satisfy its SBE commitment, the SBE joint venture partner must be responsible for a clearly defined portion of the work to be performed in addition to satisfying the requirements of ownership and control. The SBE joint venture partner must submit information for determining joint venture eligibility. ***The SBE joint venture must be approved as a SBE joint venture prior to bid opening.*** The Department of Procurement, Business Enterprise & Compliance Program shall determine the degree of SBE participation resulting from the joint venture which may be credited toward the applicable SBE goal of the project.

II. BID OPENING PROCEDURES

A. SUBMISSION OF THE SUBCONTRACTORS LIST AND SBE PLAN

In accordance with the Tucson Procurement Code Sections 28-48(2) and 28-150(4), all bidders must submit the City's Subcontractors List and the Proposed SBE Plan and the Affidavit of Good Faith Efforts, if applicable, with their bid. Bidders must list (1) **all** SBE subcontractors regardless of contract value and; (2) all first tier subcontractors with a contract value at or above \$5,000.

The Subcontractors List and Proposed SBE Plan must include:

1. SBE Firms
 - a. The name of the SBE firm
 - b. The trade/industry (scope of work) of the SBE subcontractors/suppliers
 - c. The dollar value of SBE's subcontract
 - d. Include the prime contractor as an SBE, if applicable
 - i. The dollar value of the prime contractor's self-performed work if claiming SBE credit
 - e. The total dollar value of SBE work performed and percentage of contract value
 - f. If the contract goal is not met, evidence of good faith efforts.
2. First Tier Subcontractors with contract value at and above \$5,000

- a. The name of the Subcontractor
- b. The trade/industry (scope of work) the subcontractor will perform on the project

B. REVIEW OF SBE PLANS

The Procurement Director may determine that the bidder is nonresponsive where the bidder: (1) failed to provide a completed Subcontractors List and a Statement of Proposed SBE Plan form; (2) failed to identify SBEs by name, the scope of work and value of work as a percent of the total bid sufficient to meet the applicable SBE goal for that project; (3) failed to achieve the dollar value of credible participation by certified SBEs necessary to meet the project goals; or (4) failed to meet the requirements for a waiver of the SBE goal.

C. PRIME CONTRACTOR REPORTING OF SUBCONTRACTOR UTILIZATION

Prior to commencement of work, the Contractor is required to identify all subcontractors proposed to perform work on the project utilizing the City of Tucson's Contract Compliance Reporting System. Prior to contract closeout, Prime Contractor shall provide subcontractors performance ratings in accordance with Paragraph **IV. Miscellaneous Provisions; C. Contractor Performance Evaluation**, below.

III. GOOD FAITH EFFORT

If the SBE plan does not meet the project goals, the bidder may seek a good faith effort waiver. The application for a waiver shall be in writing and **must be completed and submitted with the bid documents**. The request must indicate whether a complete or partial waiver is sought. If a partial waiver is being sought, the scope of such waiver must be indicated and an SBE plan must also be submitted. The bidder must provide documented evidence including a narrative statement with supporting affidavits and/or exhibits verifying the good faith efforts to meet the goals. Evidence of the good faith efforts shall include, but is not limited to the following:

- a. Documentation of communication with the Department of Procurement seeking technical/professional assistance identifying available SBE's.
- b. Copies of written notification to Certified SBE's regarding subcontracting opportunities on a project.
- c. Documentation of efforts made to select portions of work for SBE subcontracting in order to increase the likelihood of meeting the SBE goals, including where appropriate breaking down subcontracts into economically feasible units in order to facilitate SBE participation.
- d. Documentation of efforts to assist and negotiate with SBE's for specific sub-proposals and reasons for rejection of any such offer, including the names, addresses, and telephone numbers of SBE's who were contacted and reason for the rejection.
- e. As to each SBE contacted which was considered not to be qualified, a written statement of the reasons for the conclusion.
- f. Written quotes or records of verbal quotes solicited from all SBE's seeking subcontract work with bidders at the time of the proposal submittal.
- g. Verification that the offeror rejected available SBE's because they submitted proposals which were unreasonably high, or they were not qualified. Such verification shall include a statement of the amounts of all proposals received from potential Subcontractors and all relevant dates.

The City's Procurement Director shall review the waiver and approve the waiver where the bidder has demonstrated good faith efforts or deem the bidder nonresponsive where they failed to meet the good faith efforts and the bid shall be rejected.

Right to Appeal Good Faith Effort Waiver or Plan Decision An aggrieved party has a right to protest a good faith waiver request or plan decision made by the Procurement Director as follows:

1. An aggrieved party may submit a protest in writing to the Procurement Director within five (5) days from the date of notice of the adverse decision notice. The protest must include the legal and factual basis for the protest along with any supporting documents.

2. Within five (5) days of receipt of the protest, the Procurement Director shall review the protest and all relevant supporting documents and render a decision notice in writing which includes the basis for the decision.
3. The decision of the Director is final and not appealable.

General Waiver or Reduction of SBE Goals The Procurement Director may waive or reduce the project goals if it is determined that the SBE availability is less than projected. In such circumstances, the Procurement Director shall certify that SBE's are not in fact available or that the amount of work, which occurred under the contract, was insufficient to support the established goals.

The City may waive a project goal, at least in part, if the bidder requesting a waiver receives from all qualified SBE's, in one trade or industry, quotes or proposal that exceeds the lowest quote or proposal of a qualified non-SBE competing for the same work by the lesser of fifteen percent (15%) or two hundred and fifty thousand dollars (\$250,000). In such circumstances, the Procurement Director shall certify that SBE's are not ready, willing and able to provide the needed labor and materials at competitive prices.

A bidder may not compare self-performed costs against an SBE subcontractor proposal as justification for the rejection of a proposal.

The Procurement Director may verify and / or clarify information as it relates to the affidavit of good faith efforts, and / or the bidders' subcontractors list and statement of proposed SBE plan.

IV. MISCELLANEOUS PROVISIONS

A. SUBCONTRACTOR PERFORMANCE & SUBSTITUTION REQUESTS:

The contractor's distinct contract items of work to be awarded to SBE's shall be performed by the designated SBE. The SBE must perform a commercially useful function, that is, the SBE must manage, perform, and supervise a distinct element of work.

All subcontractor modifications (addition, substitution, deletion) pursuant to the Tucson Procurement Code Section 28-48(2), may only be allowed at the sole discretion of the Procurement Director. Approval must be obtained prior to the subcontractor beginning the work.

In the event that an SBE is unable or unwilling to fulfill its agreement with the contractor, the contractor shall immediately notify the Procurement Department's Business Enterprise & Compliance Program, the Contract Officer and the Project Manager. The SBE firm can only be terminated for good cause. The contractor shall immediately take reasonable good faith efforts to obtain another certified SBE firm to perform an equal or greater dollar value of the work. The contractor shall provide all pertinent information regarding the SBE substitution request including but not limited to:

1. The name of the original SBE firm, the description of work, the dollar value, the reason for the substitution request and a statement from the original SBE firm explaining why they can't perform the work.;
2. The name of the proposed substitute SBE's, description of proposed work and estimated dollar value of the work and any relevant information such as a written quote, etc.

SBE contract work items shall not be performed by the contractor in lieu of subcontracting, without obtaining prior approval as outlined above.

Contract items eliminated from the project, with the approval of the Project Manager, may not reduce the contractor's obligation for SBE participation.

B. SBE PROGRAM COMPLIANCE

The contractor and all SBE subcontractors must comply with all aspects of the SBE Program. By submitting a bid to the City of Tucson; bidders bind themselves to make every good faith effort to meet the City's SBE goal. The contractor must also include a copy of the SBE contract provisions in every subcontract. An executed subcontract with all SBE subcontractors shall be completed prior to commencement of work, and available to the City of Tucson.

Failure by the contractor to comply with the SBE provisions is a material breach of the contract which may result in remedies as deemed appropriate by the City, including but not limited to the following:

- (1) Withholding monthly progress or final payments;
- (2) Withholding 10% of future payments;
- (3) Contract termination;
- (4) Disqualifying the contractor from future bidding as non-responsible.

The contractor must comply with applicable Prompt Payment regulations, Tucson Code Section 11-38 and Arizona Revised Statutes Title 32-1183. The City of Tucson may withhold payment from the prime contractor for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

The prime contractors must provide notice to all subcontractors that complaints of violations of the prompt payment provision may be submitted in writing to the City of Tucson, Procurement Operations, Business Enterprise & Compliance Program, 255 W. Alameda, 6th floor Tucson, Arizona 85701 – PO Box 27210, Tucson, Arizona 85726. The complaint shall set forth the facts and identify the prime contractor and the construction project. Subcontractors will be assisted by the Department of Procurement, Business Enterprise & Compliance Program with the complaint process as detailed in the City of Tucson Ordinance No. 9158 comprised of Chapter 28, Tucson Procurement Code Section 28-101, Tucson Code Chapter 11-38 and Tucson Code, Chapter 8-2.2.

C. CONTRACTOR PERFORMANCE EVALUATION

At the conclusion of every City of Tucson construction project, the prime contractor is required to provide subcontractors performance ratings. Reporting will include a section to rate the performance of **all** project subcontractors from 1 – 5, based on industry standards. A score of 3 is considered average. A score of 4 or 5 is considered above average. A score of 1 or 2 is considered as poor performance. A rating of 1 or 2 of a subcontractor will require the prime contractor to complete a Substandard Performance Report documenting the cause for the substandard performance rating. The City of Tucson Project Manager must concur with all poor performance ratings.



**BUSINESS SERVICES DEPARTMENT
BUSINESS ENTERPRISE & COMPLIANCE PROGRAM
SUBCONTRACTORS LIST AND STATEMENT OF PROPOSED SBE PLAN**

Solicitation/Contract No. _____ Project Name: _____

Enter your SBE subcontractors for this project in the following table per submission requirements contained in the applicable Tucson Procurement Code Section 28-150(4), 28-150(5) or 28-151.1(3). Any addition, deletion or substitution to the listed SBE subcontractors post award requires approval from and is at the sole discretion of the Procurement Director.

ALL PROPOSED SBE FIRMS (Print additional form to add more SBE firms)		
Subcontractor's Name	Trade/Industry	Dollar Value of Contract

Enter your committed subcontractors for this project in the following table per submission requirements contained in Tucson Procurement Code Section 28-48(2). Any addition, deletion or substitution to the listed subcontractors post award requires approval from and is at the discretion of the Procurement Director.

FIRST TIER SUBCONTRACTORS WITH CONTRACTS VALUED AT AND ABOVE \$5,000 (Print additional form to add more subcontractors)		
Subcontractor's Name	Trade/Industry	Dollar Value of Contract

Bidder's Base Bid Amount \$ _____

Total Claimed SBE Participation \$ _____ %

I hereby certify by signing below that the foregoing SBE firms shall be contracted to work on the trades identified above and/or supply material and/or equipment for this project. The information shown above is a true reflection of the proposed subcontracts expressed as a percentage of the base bid.

Company Name: _____

Signature: _____

Phone No. _____

Date: _____

Name & Title: _____



**BUSINESS SERVICES DEPARTMENT
BUSINESS ENTERPRISE & COMPLIANCE PROGRAM
AFFIDAVIT OF GOOD FAITH EFFORTS**

SOLICITATION/CONTRACT NO: _____

PROJECT NAME: _____

COMPANY NAME: _____

CONTACT NAME: _____ PHONE NUMBER: _____ FAX NUMBER: _____

WHERE A BIDDER FAILS TO EXERCISE “GOOD FAITH” EFFORTS TO MEET SBE GOALS, AS REQUIRED BY THE CITY OF TUCSON, THE BIDDER WILL BE DEEMED NONRESPONSIVE.

The intent of this certification is to document the good faith efforts implemented by the apparent low bidder in soliciting and utilizing SBE firms to meet the City of Tucson’s SBE goal. This certificate will assist the City of Tucson’s Department of Procurement, Business Enterprise & Compliance Program in determining whether the apparent low bidder has implemented comprehensive good faith efforts. The burden of proof rests with the bidder.

1. Is a partial or complete waiver being sought? Please explain. Note: If a partial waiver is being sought the scope of such waiver must be indicated and a SBE Plan must also be submitted.

2. Provide a brief summary of why the SBE goal on this project has not been met. Attach supporting documentation.

3. Which portions of the contract proposal, in terms of the nature of the work, were selected to be subcontracted to SBE firms? Attach supporting documentation (e.g. memo, proposal, project breakdown, etc.).

4. Which portion of the contract proposal, in terms of suppliers was identified for SBE firms? Attach supporting documentation (e.g. memo, proposal, project material breakdown etc.).

5. Which SBE firms were solicited in writing for subcontract or supplier quotes/bids? Also, in the appropriate space identify when the firms received subsequent telephone solicitations. Attach supporting documentation (e.g. copy of written solicitation to SBE firms, along with copies of telephone logs documenting follow-up communications, etc.).

Name of Company Contacted Contact Person Dates of Contact Telephone #

6. Was the City of Tucson's Department of Procurement, Business Enterprise & Compliance Program technical or professional staff contacted for assistance? (Note that it is the policy of the Department of Procurement to offer technical support to respondents to ensure that all avenues have been exhausted in meeting the SBE goal.) Attach necessary documentation.

Yes ____ No ____ Date of Contact _____ Contact Person _____

7. Describe any efforts undertaken to provide SBE firms with information about the project plans, specifications and requirements of the contract.

8. Describe any additional efforts undertaken to assist SBE firms (e.g. bonding assistance, lines of credit, etc.).

9. Indicate which SBE firms submitted quotes on the contract proposal and provide a brief explanation of the reasons why these quotes were rejected. If price was a factor provide documentation to show quotes received from non-certified firms.

Name of SBE Firm	Explanation for Rejecting Quotes

10. Were any bids from SBE Subcontractors that were no more than 15% or \$250,000 greater than the accepted Non-SBE Subcontractor rejected? If so, describe in detail

11. Describe in detail any supplemental items or efforts which you wish to have the department consider as part of your Good Faith Effort. Attach additional documentation or sheets for this item.

(Note: Prime Contractor must explain why the subcontractor that was identified in the Prime Contractor's bid is now being modified. Reason must demonstrate that this modification does not violate City of Tucson Ordinance 9158 as well as Section 28-48(2), Section 28-150(6)(5), Section 28-151.4(1), and Section 28-151.4(2) of the Tucson Procurement Code. The City seeks to ensure that this request is not being made as a result of **"bid shopping"** on the part of the Prime Contractor.)