



**Business Enterprise Program
Utilization Plan and Goal Waivers
FAQs and Scenarios**

The purpose of this document is to provide purchasing entities with clear, uniform guidance on CEI's updated interpretation of Business Enterprise Program (BEP) goal waiver requests and Utilization Plan (U-Plan) curing under the Business Enterprise for Minorities, Women, and Persons with Disabilities Act (BEP Act). This resource explains when goal waiver requests must be submitted, when cures are permissible, who is responsible for communicating goal waiver determinations, and how responsiveness evaluations are handled in common procurement scenarios. The FAQs and examples included in this document are designed to help purchasing entities apply CEI's determinations consistently and ensure BEP requirements are administered accurately throughout the procurement process.

Question: Can goal waiver requests be submitted up until the time of award? When is the cut-off?

Answer: No. CEI no longer interprets the language to allow for multiple waiver request attempts after bid opening. The cut-off is bid opening.

Question: What does bid opening mean?

Answer: Bid opening is the bid or offer due date and time.

Question: Who informs a vendor that its goal waiver request is denied? When does that notice occur?

Answer: The purchasing entity notifies the vendor of BEP's waiver request determination. The notice occurs after BEP makes the determination, completes the waiver determination form, notifies the purchasing entity, who in turn notifies the vendor.

Question: If a vendor's goal waiver request is denied, is the vendor's bid or offer deemed non-responsive?

Answer: When submitting a U-plan, vendors must choose whether to achieve the assigned goal by completing the U-Plan or by pursuing a full or partial goal waiver.

If a vendor submits a waiver request for the whole goal and it is denied, this results in a non-responsive U-Plan, which means that the vendor should be deemed non-responsive.

If a vendor submits a waiver request for a portion of the goal and it is denied, the purchasing entity will offer the vendor a 10-day cure period to cure the deficiency by contracting with other certified

firms or giving the firms already identified in the partial achievement a higher percentage to meet the whole goal. If the vendor fails to cure the U-Plan on time by achieving the whole goal, then the U-Plan is non-responsive.

The vendor doesn't receive another opportunity to submit a goal waiver request.

Question: Can BEP offer a goal waiver cure to a vendor with a deficient goal waiver request?

Answer: No. Waivers cannot be "cured" like U-Plan deficiencies. Vendors are not permitted to submit corrected subsequent waiver requests.

Scenario No. 1

Facts: A vendor fails to submit a U-Plan with their bid. They are deemed non-responsive for failing to provide the U-Plan. The bidder protests, claiming they were incorrectly considered non-responsive because they are permitted to submit a goal waiver request up until the time of the award.

Question: What is BEP's response to the vendor's protest?

CEI's Response: A vendor's initial failure to submit a U-Plan (which includes the Section 4(e) requirement that the documentation necessary for a goal waiver request is included with the U-Plan submission) means that this vendor's non-responsive status couldn't be changed.

Scenario No. 2

Facts: A solicitation is published with a 10% BEP goal. A prime vendor submits a U-Plan meeting 5% of the 10% goal and requests a goal waiver for the remaining 5%.

Question(s): If BEP denies the goal waiver request, is the vendor given a 10-day cure period to contract with new BEP-certified firms or increase the work of the BEP-certified firms identified in the initial U-Plan submission? Does the vendor have until the award to submit a new goal waiver request?

CEI's Response: The vendor can submit a U-Plan noting that it is requesting a partial goal waiver by the bid opening. That goal waiver request will be reviewed and determined by BEP. If the partial goal waiver is approved, then the U-Plan with the 5% achievement is responsive. If the partial goal waiver is denied, the purchasing entity can offer the vendor one 10-day cure period to contract with additional subcontractors or increase the work assigned to the BEP-certified firms identified in the initial U-Plan to meet the whole 10% goal. If the vendor fails to cure the U-Plan on time, then the U-Plan is non-responsive. The cutoff for goal waiver requests is bid opening. The vendor doesn't receive another opportunity to submit a goal waiver request.

Scenario No. 3

Facts: A vendor timely submits a signed U-Plan that includes only contact information. The vendor did not check any required U-Plan boxes, and no information indicates that the vendor is requesting a goal waiver.

Question(s): How can a purchasing entity tell if a 10-day cure is appropriate when there is no indication that the vendor seeks a goal waiver or intends to meet the goal? Is a U-Plan that contains only a signature and contact information responsive?

CEI's Response: Unless the submitting vendor is a BEP-certified firm (they receive an exception under the last paragraph in Section 4(e) of the BEP Act that non-certified vendors don't), offering a cure here isn't appropriate. Per Section 4(e) of the BEP Act, a cure is not authorized if the bidder or offeror submits a U-Plan that shows a lack of reasonable effort to complete the form on time.

Scenario No. 4

Facts: A solicitation is published with a 10% BEP goal. A prime vendor submits a U-Plan meeting 0% of the 10% goal and requests a goal waiver for the full 10%.

Question(s): Should the purchasing entity give the vendor a 10-day cure period to meet the whole 10% goal if BEP denies its goal waiver request? Does the vendor have until the award to submit a new goal waiver request?

CEI's Response: If BEP approves the goal waiver request, then the U-Plan with the 0% achievement is responsive. If BEP denies the goal waiver request, the purchasing entity cannot offer the vendor a 10-day cure period to contract with additional subcontractors to meet the 10% goal. The cutoff for goal waiver requests is bid opening. The vendor doesn't receive another opportunity to submit a goal waiver request.