



Welcome to the Subcontractors Academy!

Brought To You By:

City of Austin

Contract Management Department

In partnership with



Goals:

1. Ensure all interested subcontractors have access to information, resources and tools they need to be successful in their City contracts.
2. Provide subcontractors an opportunity to network with, and learn alongside, government contracting officials.
3. To gain a better understanding of the City processes, roles, and responsibilities associated with City government contracting.



Contract Management Department

Subcontractors Academy

MBE/WBE Program Contract Compliance

October 22, 2014

*Rolando Fernandez, Assistant Director
Marisol Claudio-Ehalt, Program Consultant
City of Austin - Contract Management Department*

This month's feature speaker
Tamela C. Saldana, Ph.D.
Compliance Division Manager | Compliance Division
City of Austin | Small & Minority Business Resources
Direct Phone: 512-974-7844 | Email:

Tamela.Saldana@austintexas.gov



Program Overview

The goal of the City of Austin's MBE/WBE Procurement Program is to assure minority business enterprises (MBE), women business enterprises (WBE), and disadvantaged business enterprises (DBE) are afforded the opportunity to participate in contract and procurement for supplies, construction, equipment and services.

Opening The Door To Opportunities

Compliance Division

Responsible for enforcing the program on City procurements from solicitation to the completion of a project.

- ▶ Set/Approve participation goals
- ▶ Educate constituents on program requirements
- ▶ Review & track M/WBE utilization
- ▶ Perform audits
- ▶ Facilitate Prime/Sub issues
- ▶ Determine contractor compliance

Who is impacted by MBE/WBE contract compliance monitoring?

- ▶ Prime Contractors / Consultants
- ▶ Subcontractors / Subconsultants
- ▶ Material Suppliers
- ▶ Trucking Operators



MBE/WBE Compliance Requirements

- ▶ During the solicitation stage, the City makes a determination if the goal has been met or if the bidder has demonstrated Good Faith Efforts (GFE).
- ▶ During the contract compliance stage, the City is monitoring whether the prime contractor is fulfilling his/her contractual obligations for MBE/WBE & Sub contractor participation.

How does MBE/WBE compliance monitoring work?

Solicitation (Pre-Award)

City staff reviews solicitations, set project goals, collaborates with Project Managers to help identify scopes of work on projects, and verifies Compliance Plan information submitted by Bidders/Proposers.

Council Award

Construction (Post-Award)

After the contract is awarded the City continues to monitor and assess compliance by conducting site audits, reviewing payment requests, facilitating performance/payment issues, and determining final compliance with the program.

How does MBE/WBE compliance monitoring work?

Solicitation (Pre-Award)

Firms must be M/WBE Certified.

Firms must be certified in the commodity code on the availability list.

Dually certified firms can not be counted towards both MBE & WBE goal

Council Award

Construction (Post-Award)

Count participation of certified firms.

Notify prime of any additional 2nd tier subs.

MBE/WBE contract compliance monitoring

MBE/WBE contract compliance monitoring includes but is not limited to the following seven evaluation methods:

1. Site visits
2. Interviews of personnel on job site
3. Verification of pay requests and Monthly Subcontract Awards and Expenditures report (Sub K)
4. Review of company policies
5. Evaluation of “good faith efforts”
6. Verification of MBE/WBE certifications
7. Review of cancelled checks paid to subcontractors, subconsultants and suppliers.

Should you keep track of MBE/WBE “commitments”, “achievements” or both?

- ▶ Both. To verify that the work committed to MBE/WBE at contract award is actually performed by the MBE/WBE; COA, contractors and subs need to track both commitments and actual achievements.
- ▶ Final information on actual achievements will often not be available in the same year in which contracts are let. Will often have to rely on commitments information in order to administer their projects/programs (e.g. make needed adjustments)
- ▶ On the other hand, keeping track of actual achievements are not counted toward goals until MBE/WBEs receive payment for their work. If the actual achievements falls short of commitments, this is an indication that corrective action should be taken to improve program performance.



MBE/WBE & Subcontractor REPLACEMENT

- ▶ Upon award of a contract by the City Council, the Goals or Subgoals become covenants of performance by the Contractor in favor of the City.
- ▶ The Contractor cannot make changes to the compliance plan or substitute Subcontractors listed in the compliance plan without the prior written approval of the Director.
- ▶ **Unauthorized changes or substitutions shall be a violation of the MBE/WBE Ordinance, and may constitute grounds for rejection of the Bid or Proposal or cause termination of the executed Contract for breach, and/or subject the Bidder/Proposer to Contract penalties or other sanctions.**
- ▶ Once a contract has been awarded, MBE/WBE goals are monitored by City compliance staff to determine whether the MBE/WBE participation dollar amounts, percentages and the committed goal level which the contract was awarded are maintained over the term of the contract.

Every worker is either an
employee or a subcontractor



Can a prime contractor reduce the amount of work committed to an MBE/WBE firm after contract award without good cause?

No. The prime contractor can reduce the amount of work committed to the M/WBE & DBE only for good cause and only with the **prior** written concurrence of the City.

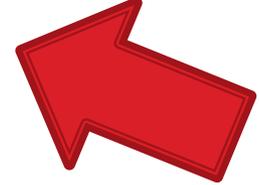
Substitutions of the subcontractor shall be permitted only on the following bases:

1. unavailability after receipt of reasonable notice to proceed
2. failure of performance
3. financial incapacity
4. refusal by the Subcontractor to honor the Bid or Proposal price
5. mistake of fact or law about the elements of the scope of work of a Solicitation where a reasonable price cannot be agreed
6. failure of the Subcontractor to meet insurance, licensing or bonding requirements; or
7. the Subcontractor's withdrawal of its Bid or Proposal.

Example:

- ▶ Suppose a prime contractor commits \$500K to each of two MBE firms subcontractors, thereby meeting a 10% goal on a \$10M prime contract.
- ▶ Part way through their performance of the contract, the prime contractor finds it necessary to expend an additional \$100K in the work being performed by MBE subcontractor #1.
- ▶ The contractor then wishes to reduce the work assigned to MBE #2 by \$100K, reasoning that the 10% goal will still be met.
- ▶ In such situation, the prime contractor cannot act on its own to reduce the work assigned to MBE subcontractor #2. It would have to comply with section 2-9A-22 Post Award Compliance Procedures





- All requests for changes or substitutions of the Subcontractors listed in the compliance plan shall be made to the SMBR Director in writing, and shall clearly and fully set forth the basis for the request.
- A Contractor shall not substitute a Subcontractor or perform the work designated for a Subcontractor in the compliance plan with its own forces unless and until the Director approves such substitution in writing.
- A Contractor shall not allow a substituted Subcontractor to begin work until both the Director and the City's project manager overseeing the completion of the Contract have approved the substitution.

(Source: 2-9A-23 Post-Submission Changes to the Compliance Plan)



REQUEST FOR CHANGE OF COMPLIANCE PLAN

Note: This form is not for changes to a current subcontractor's contract amount if the change is both less than 5% of the current subcontractor's contract amount and less than \$25,000. A change this minor will be documented instead on the subcontractor participation form submitted with the next application for payment. This provision is intended to accommodate the typical margin of error in quantities that is inherent in construction projects. This provision is not intended to allow contractors to self-perform work intended for subcontractors or to unlawfully substitute subcontractors.

Date:	Contract No.:
Solicitation No.:	Project Name:
Prime Contractor/Consultant:	

Proposed Change:

Subcontractor/Subconsultant Level:

Name of Subconsultant/Subcontractor:		
Vendor Code:	Ethnic/Gender Code:	City of Austin Certified: <input type="text"/>
Contact Person:	Phone No.:	
Proposed Change (\$):	Change (%):	
Commodity Code & Brief Description of Work:		
Reason for Requesting Change: (Attach supporting documentation as necessary):		

Note: If the request is a substitution, complete information for the firm being removed in the space above and sub being added below.

Subcontractor/Subconsultant Level:

Name of Subconsultant/Subcontractor:		
Vendor Code:	Ethnic/Gender Code:	City of Austin Certified: <input type="text"/>
Contact Person:	Phone No.:	
Proposed Change (\$):	Change (%):	
Commodity Code & Brief Description of Work:		
Reason for Requesting Change: (Attach supporting documentation as necessary):		

Add Another Change	Delete Change
--------------------	---------------

I certify that the information included in this Request for Change of Compliance Plan is true and complete to the best of my knowledge and belief.

Prime Consultant/Contractor Printed Name	
Prime Consultant/Contractor Signature	Date



Do the contract goals apply to change orders in contracts?

- ▶ Yes. If there is a change order to a contract on which there are MBE/WBE/DBE goals, then the contract goals apply to the change order as well as to the original contract.
- ▶ Where there is a change order that requires work beyond the scope of trades originally required to accomplish the project, then it is the duty of the Contractor to fulfill the Goals or to make Good Faith Efforts to fulfill the Goals for that change order.
- ▶ Change orders that do not alter the type of trades originally required to accomplish the project may be undertaken using the Subcontractors and suppliers already under Contract to the Contractor.
- ▶ For example, suppose a \$1M contract is awarded to Firm X. The contract MBE goal is 15%. Firm X meets the contract goal by obtaining participation from subcontractors /suppliers amounting to \$150K.
- ▶ Part way through performance of the contract, the City determines that additional work is necessary, and issues a change order that will add \$500K to the total contract price. The 15% contract goal applies to this additional \$500K.
- ▶ To meet the contract goal as applied to the change order, Firm X would have to make good faith efforts to obtain an additional \$75K in MBE participation.
- ▶ It could meet this obligation by either obtaining the additional \$75K in work by MBE subcontractors/suppliers or by documenting good faith efforts.

How does the City determine whether a prime contractor has met a contract goal?

- ▶ The City counts toward MBE/WBE/DBE goals the value of work actually performed by MBE/WBE/DBEs.
- ▶ For example, suppose DBE Firm X is the apparent low bidder on a prime contract with a 10% contract goal. Firm X will perform 30% of the work with its own forces. This means that 30% of the contract goal counts towards the DBE contract goal. This exceeds the 10% contract goal. Therefore, Firm X meets the contract goal.
- ▶ In the example above, suppose the contract goal is 35% instead of 10%. Firm X is credited with 30% DBE participation on the basis of the work it does with its own forces. This leaves the firm 5% short of meeting the contract goal. Firm X would have to seek an additional 5% DBE through subcontracting with another DBE or document the good faith efforts it made attempting to secure this participation.

Let's Recap



- ▶ The goal of the City of Austin's MBE/WBE Procurement Program is to assure minority business enterprises (MBE), women business enterprises (WBE), and disadvantaged business enterprises (DBE) are afforded the opportunity to participate in contract and procurement for supplies, construction, equipment and services.
- ▶ MBE/WBE contract compliance monitoring is important because it is a way to verify who is performing the work on City contracts.
- ▶ Additionally, it allows the City to verify whether the subcontractors are actually performing the work that they have been committed to and that they are certified to perform the work.
- ▶ MBE/WBE compliance monitoring protects the City's interest in the construction of public improvements by assuring that these projects are constructed and administered in accordance with the plans, specifications, and all applicable laws to afford the greatest benefit to the public.



Opening The Door To Opportunities

Questions? Comments?



For additional Information:
<http://austintexas.gov/department/contract-management>

Next Topic/Class:
Grant Funded Projects
Wednesday, January 28, 2015
9:00 – 10:00 am
One Texas Center
Suite 1045