

NOTICE OF RULE ADOPTION

EFFECTIVE DATE: JANUARY 1, 2011

By: Veronica Briseño Lara, Director
Small & Minority Business Resources Department

The Director of the Small & Minority Business Resources Department (SMBR) has adopted the following rule. Notice of the proposed rule was posted on November 19, 2010. Public comment on the proposed rule was solicited in the November 19, 2010 notice. This notice is issued under Chapter 1-2 of the City Code. The adoption of a rule may be appealed to the City Manager in accordance with Section 1-2-10 of the City Code as explained below.

The text of the adopted rule reads in its entirety as follows:

9.2.2 Bidders/Proposers must notify MBEs and WBEs of subcontracting/subconsulting opportunities at least seven~~[five]~~ business days before submission of the bid/proposal.

EFFECTIVE DATE OF ADOPTED AMENDED RULE

A rule adopted by this notice is effective on January 1, 2011.

TEXT OF PROPOSED RULE

The adopted rule contains no changes from the proposed rule.

The adopted amendment affects Section 9.2.2 relating to Pre-Award Compliance with the MBE/WBE Procurement Program. The text of the amendment in its entirety is as follows:

9.2.2 Bidders/Proposers must notify MBEs and WBEs of subcontracting/subconsulting opportunities at least seven ~~five~~ business days before submission of the bid/proposal.

SUMMARY OF COMMENTS

The Small & Minority Business Resources (SMBR) received written comments supporting (five comments), opposing (three comments) and undecided on (two comments) the proposed rule change.

The first opposing comment stated that five days was adequate time and the addition of two days would impact prime vendors' review, selection, and coordination of firms through the Good Faith Effort process. The second opposing comment stated general contractors would miss the deadline and therefore limit qualified bids submitted to the City. One of the opposing comments stated that this change is the reason there is racism.

One undecided comment stated that that the benefit of the increase would depend on how long it takes the City to respond to Bidder/Proposer questions concerning bids, and one stated that seven days is adequate for Requests For Qualifications but ten days might be appropriate for certain cases where subcontractors must provide detailed bids with specific pricing information.

DEPARTMENT RESPONSE & JUSTIFICATION

After reviewing the comments received, SMBR has determined it will adopt the proposed rule amending Section 9.2.2 increasing the number of days from 5 to 7 days that a bidder must notify

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MBEs and WBEs of subcontracting/subconsulting opportunities.

SMBR's role is to ensure that certified MBEs and WBEs have an opportunity to participate in City procurement. Increasing the amount of time notifications are sent provides an opportunity to certified firms to determine whether they are interested in participating on a particular project. The initial notification should be sent with as much information about the project including but not limited to potential subcontracting opportunities, pre-bid information, bid date information, Bidder/Proposer contact information, locations to review plans and specifications, and deadline for bid submissions to Bidders/Proposers. The intent of the initial notification is to not only provide an opportunity to network but also identify interested certified firms. Good Faith Efforts also includes following up with interested MBEs and WBEs. Again, this notification serves as the first step in communicating with certified firms about opportunities.

The comments received and a copy of SMBR's response to the comments is available for public inspection. Copies of the comments may be purchased for a fee of ten cents per page by contacting Amelie Gonzalez-Flores at 974-7014.

AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of the City Code is established in Chapter 1-2 of the City Code. The authority for the Director to formulate, propose, and adopt rules for the development, implementation, and monitoring of the Minority-Owned and Women-Owned Business Enterprise Procurement Program is established in Sections 2-9A-10, 2-9B-10, 2-9C-10, and 2-9D-10 of the City Code.

APPEAL OF ADOPTION OF RULE

A person may appeal the adoption of a rule to the City Manager. **AN APPEAL MUST BE FILED WITH THE CITY CLERK NOT LATER THAN THE 30TH DAY AFTER THE DATE THIS NOTICE OF RULE ADOPTION IS POSTED. THE POSTING DATE IS NOTED ON THE FRONT PAGE OF THIS NOTICE.** If the 30th day is a Saturday, Sunday, or official city holiday, an appeal may be filed on the next day which is not a Saturday, Sunday, or official city holiday.

An adopted rule may be appealed by filing a written statement with the City Clerk. A person who appeals a rule must (1) provide the person's name, mailing address, and telephone number; (2) identify the rule being appealed; and (3) include a statement of specific reasons why the rule should be modified or withdrawn.

Notice that an appeal was filed will be posted by the City Clerk. A copy of the appeal will be provided to the City Council. An adopted rule will not be enforced pending the City Manager's decision. The City Manager may affirm, modify, or withdraw an adopted rule. If the City Manager does not act on an appeal on or before the 60th day after the date the notice of rule adoption is posted, the rule is withdrawn. Notice of the City Manager's decision on an appeal will be posted by the City Clerk and provided to the City Council.

On or before the 16th day after the city clerk posts notice of the City Manager's decision, the City Manager may reconsider the decision on an appeal. Not later than the 31st day after giving written notice of an intent to reconsider, the City Manager shall make a decision.

CERTIFICATION BY CITY ATTORNEY

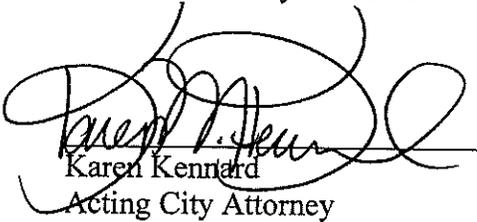
By signing this Notice of Rule Adoption R161-11.13o, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Veronica Briseño Lara, Director
Small & Minority Business Resources Department

Date: 12-22-10



Karen Kennard
Acting City Attorney

Date: 12/30/2010

This NOTICE OF ADOPTION was posted on a central bulletin board at City Hall by the City Clerk. Time and date stamp is on the front of the Notice.