

**AUSTIN AREA BLACK CONTRACTORS ASSOCIATION, INC.
PRESENTATION TO THE
CITY OF AUSTIN
ECONOMIC OPPORTUNITY COMMITTEE**



a collaborative partner of the Minority Trade Association Alliance

ISSUE 1: MBE/WBE PROCUREMENT PROGRAM

► The City of Austin MBE/WBE Procurement Program Ordinance was written in lay terms for easy interpretation for the users (MBEs, WBEs, prime contractors and SMBR staff). The Department of Small and Minority Business Resources rely on the City's Law Department to advise On the MBE/WBE Ordinance and Rules. The problem with this approach, is the Law Department's legal staff does not have the in depth knowledge or expertise to advise on the ordinance.

► City user departments give directives as well to SMBR on actions to take regarding the ordinance to get their projects approved before Council.

► There is no dedicated city attorney assigned to SMBR with the expertise in procurement law. The legal staff takes the most conservative approach when interpreting what the law says rather than finding ways on how to work proactively within the constraints of the law.

Example: Partial Payment and Retainage



ISSUE 1: MBE/WBE PROCUREMENT PROGRAM

► RECOMMENDED SOLUTION:

Include this recommendation in SMBR's Budget as a beneficial resource to aide SMBR with the implementation of the Ordinance Guidelines and rules by hiring an outside Counsel knowledgeable of Supreme Court rulings /decisions, City Disparity Study, MBE/WBE Program Ordinance and Rules, and the State of Texas procurement regulations and laws.* Currently, legal staff assigned to SMBR is a revolving door --- you'll never know who will be advising with the proper expertise.

**Recommending Lino Mendiola, Attorney at Law, as outside Counsel who has a excellent track record of providing this service to SMBR*



ISSUE 2: PRE AWARD COMPLIANCE GOOD FAITH EFFORTS

► Good Faith Efforts is not fully being vetted to insure compliance as described in **Section 2-9C-21** of the **MBE/WBE Ordinance**, **pages 22, 23 24, 25, 26 of 30**. It is questionable whether these provisions are implemented to ensure that good faith efforts are met by the prime contractor.

► **RECOMMENDED SOLUTION:**
Perform an internal analysis to identify specific measures prime contractors participating on City projects, are utilizing the provisions set forth in the Ordinance to facilitate good faith efforts when they are unable to achieve the MBE/WBE participation goals.



ISSUE 3: MONITORING, TRACKING AND REPORTING

► Many MBE/WBE firms have reported that they have been listed on City project compliance plans but are never contacted to perform the work.

► **RECOMMENDED SOLUTION:**
SMBR Staff should conduct periodic job site inspections to document MBE/WBE utilization. In the event that MBE/WBE firms listed on compliance plans are not being utilized, the prime contractor should be required to provide a written explanation. If the written explanation is not justifiable, SMBR should issue a written violation to the prime if not cured in specified time.



ISSUE 4: CONFLICT OF INTEREST

► **Cronyism and Transparency**

There are individuals that have been hired in the SMBR organization to implement the Ordinance who own and operate businesses with scopes of services similar to the department.

► **RECOMMENDED SOLUTION:** Conduct Staff Training on City's Ethics Policy. Firms currently operating with conflicts should be **removed** from the City's MBE/WBE Availability List. Additionally, staff responsible for MBE/WBE/DBE certifications should be required to possess a **"honesty bond"** due to the sensitive nature of the work they performed in reviewing and verifying personal and business information required to get MBE/WBE certified.



ISSUE 5: IMPLEMENTATION OF APPROVED FINANCIAL ASSISTANCE PROGRAMS

► Eleven (11) months have passed since the Quick Pay Program (QP) and Mobilization Prompt Pay Program (MPP) were approved and introduced to the Minority and Women Business community.

► **RECOMMENDED SOLUTION:**
Direct management to immediately rollout these two programs and add to upcoming solicitation documents for those business in need of these financial services.

Note: Original rollout date was July 2014



PROPOSED FINANCIAL and PAYMENT ASSISTANCE PROGRAMS

Program Model Descriptions		City contracts	Ch. 380 contracts
1)	City approaches 3rd party financial institutions to offer independent loan program <ul style="list-style-type: none"> • Lenders voluntarily offer loans with more flexible criteria than traditional commercial loans • Lenders have expertise in making credit decisions • Concerns that interest rate will be too high; the funds will still be inaccessible; the traditional lending process moves too slow • City costs: None; no City funding would be necessary; the City could choose to dedicate 1 FTE for education and outreach 	x	x
3)	City contracts with a 3rd party administrator and funds a loan pool <ul style="list-style-type: none"> • City could require financial institution to match City's funds • City would continue to fund for a period (likely 2-3 years, subject to annual appropriation). Annual funding could decrease as the loan pool grows • During the procurement process, the City can establish the parameters of the loan program and the eligibility requirements • City funds potentially at risk of default, which could deplete the pool • City costs: Dependent on City's preferred program scope & size <ul style="list-style-type: none"> ◦ Funds paid to financial institution for program administration, Grant/seed money for revolving loan pool (\$250K-\$1M), 1 or more City FTEs to serve as Contract Administrator. This funding has been included as an unmet need in the Budget Process 	x	x
4)	City establishes Quick Pay Program (QP) <ul style="list-style-type: none"> • Prime contractor invoices City for "Quick Pay" funds. Subcontractors would apply for QPP program and perform the work. Subcontractor then invoices the prime as work is completed and is paid by the prime from the "Quick Pay" funds within 10 days of the work being accepted and approved. The prime would then invoice the City on the next regular pay application. • Similar to program used on new City Hall construction • Payment occurs once work is performed which reduces risk for the City; easy to implement for COA projects • City Costs: No additional staffing resource needs have been identified at this time. May result in higher overall bid/contract price. 	x	
5)	City establishes Mobilization Prompt Pay Program (MPP) <ul style="list-style-type: none"> • Prime contractors can submit pay applications twice a month, rather than monthly, at critical mobilization points during the project (typically the first few months of work) • Subcontractors can receive payments more quickly during critical mobilization phase • May cost the COA more contractually due to increased general conditions cost for primes and may also increase staff charges to capital projects due to review and processing of extra pay applications • City Costs: No additional staffing resource needs have been identified at this time. 	x	
6)	City establishes Cash Flow Enhancement Program (CFE) <ul style="list-style-type: none"> • Prime contractor invoices City for "CFE" funds. Subcontractors would apply for CFEP. If approved, prime would advance funds (up to 5% of the subcontractor's contract amount) to fund mobilization expenses. The loan would be paid through deductions from progress payments. (Similar to program used on Convention Center expansion) • Subcontractors can receive access to funding during critical mobilization phase. Administration as an internal City of Austin program helps ensure funding is accessed in a timely fashion • Higher risk option as project funds are loaned out in advance of performance of work • City Costs: a Lending Specialist to facilitate the review and approval process of loans and a contract administrator to monitor the activities and payments. May result in higher overall bid/contract price. This funding has been included an unmet need in the Budget Process. 	x	

Options 2, 7, and 8 were excluded because the MBE/WBE Council Committee asked staff to further explore Options 1, 3, 4, 5 and 6.

~~~See next page for Financial and Payment Assistance Options Draft Timeline~~~

Source: Kristi Samilpa, Business Process Consultant, City of Austin, Small and Minority Business Resources Department



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MTA Advocate for Policy Changes to City's Subcontract Payments

The Minority Contractors Trade Association Alliance (MTA) comprised of the Asian Contractor Association, Austin Area Black Contractor Association and the United Hispanic Contractor Association de Austin finally received good news regarding policy changes to the City's subcontractor payment procedures. The MTA have worked tirelessly over the past eleven months for these changes with the assistance from the City's Small and Minority Business Resources; Contract Management; Public Works and Law departments. The changes focused on Retainage and Partial Payments. (For background information regarding these changes refer to ABCA Newspot's August 2013, Summer Edition, Volume 29). To share the good news with you about the results, please see the below updates presented by City staff at the MTA's monthly meeting:



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Contract Management Department Update to Minority Trade Alliance June 11, 2014 Retainage

Issue: Evaluate mechanisms to allow for partial{full} release of retainage for subcontractors when work is complete and accepted.

Resolution: CMD and PWD have worked together to develop a new policy for release of retainage. What follows is the DRAFT language that is being vetted through law prior to release in the contract documents. The highlighted language is the new language.

14.1.5 Where the original Contract Amount is less than \$400,000, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less ten percent {10%} of amount thereof, which ten percent {10%} will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. Where the original Contract Amount is \$400,000 or more, OWNER will pay CONTRACTOR total amount of approved Application for Payment, less five percent {5%} of amount thereof, which five percent {5%} will be retained until final payment, less all previous payments and less all other sums that may be retained by OWNER under the terms of this Agreement. In either case, if the Work is near completion and delay occurs due to no fault or neglect of CONTRACTOR, OWNER may pay a portion of the retained amount to CONTRACTOR. CONTRACTOR, at OWNER's option, may be relieved of the obligation to complete the Work and, thereupon, CONTRACTOR shall receive payment of the balance due under the Contract subject to the conditions stated under paragraph 15.2. A Sub Contractor may submit a written request to the Project Manager requesting release of retainage for work by the Sub Contractor that has been completed and approved.

Status: The language has been drafted and is being vetted through Law in advance of the next release of the Standard Front End documents. This release is anticipated to be in July/August to coincide with the release of the Alternative Pay Programs {Quick Pay/Mobilization Prompt Pay}. Additionally, PWD staff is working on the procedure that would accompany this process change.

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