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INFORMATION ON

OBO Program Updates:

Disparity Study Implementation,
Amendments to Chapter 15, and
Programmatic Enhancements

Presented to

Budget and Fiscal Affairs Committee

April 30, 2013

Annise D. Parker

Mayor

Carlecia D. Wright

Director

611 Walker, 7th Floor
Houston, TX 77002
www.houstontx.gov/obo

T. 832.393.0600 F. 832.393.0646

Background



The City of Houston implemented its Minority and Women Business Enterprise Program (M/WBE) in 1984. The program remained largely unchanged until 2009 when the Kossman Contracting Co., Inc. v. City of Houston case required the City to remove and replace WBEs with SBEs in the M/WBE Program, resulting in an overall 22% M/SBE goal in construction. This goal, adopted by City Council, was required to be in place until a comprehensive construction industry disparity study could be performed.

The Disparity Study was published in April 2012. The Mayor appointed an internal working group led by Council Member Larry Green and the OBO Director to review report findings and recommendations.

OBO Program Updates Summary



Construction Industry Disparity Study

- New citywide construction goal
- Revised contract specific goals

Chapter 15 Proposed Revisions

- Substantive comprehensive updates after almost 30 years

Programmatic Changes

- Operational changes for greater efficiency and efficacy
- Expanded functions
- Revised policy and procedures





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Construction Industry Disparity Study

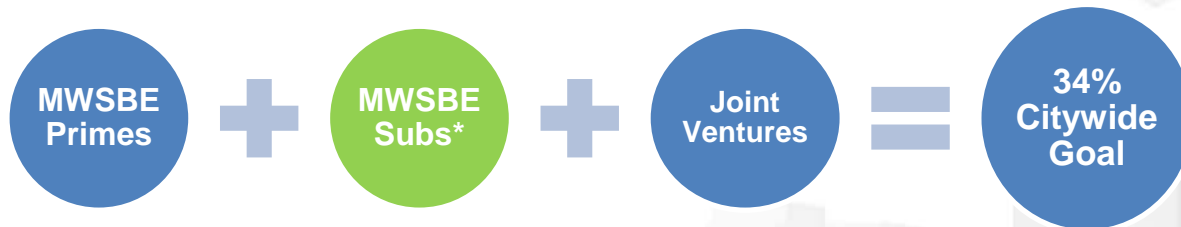
Proposed Implementations



Proposed Citywide Construction Goal

Adopt a new Annual Citywide Construction Goal of 34%

Progress made towards meeting annual citywide goal is measured by counting the participation of minorities, women and small business enterprises on prime contracts, subcontracts, and joint ventures.



*Goals will be set on contract by contract basis

FY12 Construction Contracts Awarded to Certified MSBE Firms

In FY 2012, with a citywide 22% MSBE construction goal, the City awarded a total of \$706.5M in construction contracts. Of that amount, \$229.2M was awarded to certified MSBEs, accounting for 32.4% of all construction contracts.

Total Awards to MSBEs



Reinstate WBE Goals on Construction Contracts

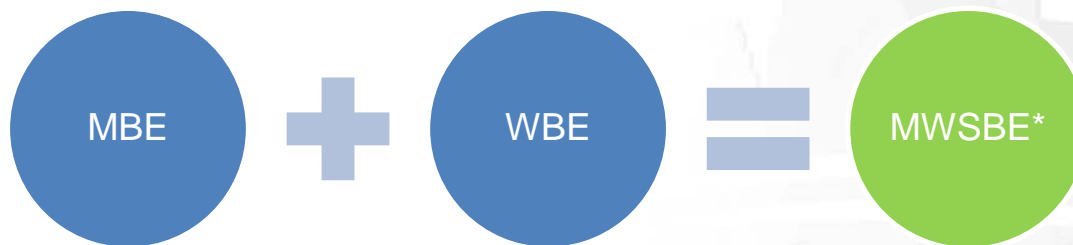


- In the 2009, *Kossmann v. City of Houston* settlement, women participation goals were removed from construction contracts.
- The Construction Disparity Study published in April 2012 found that women participation dropped by approximately 50% on City of Houston construction contracts post *Kossmann* settlement agreement.
- The Disparity Study Working Group appointed by the Mayor recommends reinstating WBE goals back into the Program.

Proposed Construction Contract Goals

Contract Specific Goals

- Goals are set on a contract-by-contract basis and will be determined by the availability of certified firms and the subcontractable work elements of each contract.
- Each contract goal will be comprised of an MBE and WBE goal, with an allowance of up to 4% SBE participation in lieu of MBE or WBE utilization.
- In instances where departments have repetitive contracts types, categorical goals will be set.



NOTE: Goals will be set for MBE and WBE proportionate to the overall availability reflected in the Disparity Study.

*SBEs can be used up to 4%



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Chapter 15 (Contracts)

Governing Ordinance

Proposed Revisions



Proposed Chapter 15 Revisions



Program Review and Certification

- The City shall initiate a review of its minority and women business enterprise program at least every 5 years in accordance with industry standard.
- Three-year MWSBE certification with an annual compliance review.

Bid Submission

- Like HISD and TxDOT, Participation Plans or Good Faith Efforts requests will be required with bid submission.

Wage Theft

- OBO will create procedures for “Theft of Services” complaints by employees of City contractors and subcontractors

Proposed Chapter 15 Revisions



Persons with Disabilities Business Enterprises (PDDBE) Program

- Targeted outreach initiative for the inclusion of disabled veterans as persons qualified to participate in the City's PDDBE program.
- Basics: Disabled veterans must have:
 - Served in the armed forces;
 - Been honorably discharged; and
 - Have proof of a service-connected disability
- Disabled veterans must meet all other qualifications of the PDDBE program and applicable provisions of Chapter 15.

Proposed Chapter 15 Revisions



Standardize Department Responsibilities

- Departments with procurement budgets over \$3 million will submit annual procurement forecasts and utilization plans to OBO.
- Engage in educating certified firms on procurement procedures.
- Send bid solicitations and RFPs to MWSBEs in a timely manner.
- Refer certified and presumed MWSBEs to OBO for certification and technical assistance services.
- Directors review requests for waivers or modification of citywide participation goals prior to submission to OBO for approval.
- Monitor departmental procurement activities to ensure compliance with progress towards the citywide participation goal.



Council Action Needed:

- Adopt annual citywide MWSBE construction goal of **34%** (Non-codified Ordinance)
- Approve proposed Chapter 15 revisions
 - Includes the reinstatement of WBEs in Program
- **Proposed effective date of changes:** July 1, 2013



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Program Enhancements

*New and Improved Policies
and Procedures*



General Programmatic Enhancements



OBO Department Services Unit

- Assist departments with setting contract specific goals.
- Review participation and/or GFE plan at bid submission.
- Review goal waiver requests.
- Facilitate OBO Procurement Training Institute to address common compliance issues and best practices.

General Programmatic Enhancements

Utilization Monitoring

- Contracting department will assume day-to-day monitoring of MWSBE participation goals while OBO will maintain oversight role, approve deviations and good faith efforts requests.

Sanctions

- Existing authority includes construction, professional services and purchasing contracts.
- OBO will expand contract rating to include all contract types
- Violations may result in suspension of participation on city contracts for up to 5 years.
 - Violations include failure to make good faith efforts to meet the MWSBE goal



Thank You.

Disparity Study:

<http://www.houstontx.gov/obo/disparitystudyfinalreport.pdf>

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