

Council Committee on Economic Development Meeting

March 22, 2021

Questions and Answers

QUESTION/COMMENT	RESPONSE
<p>1 OED - Will the kiosk be able to feature neighborhood history or highlights to promote diversity and uniqueness?</p>	<p>Each kiosks will be designed with respect to the community, character and culture of the communities where they will locate. We will discuss with the vendor the process for researching each community. The vendor must submit its plan to the city for approval and the plan includes the kiosks design.</p>
<p>2 OBO - What is the status of changes to 1995- MWBE Contract Compliance Policies and Procedures? How does the current discussion about 100% credit for self-performing participation by MBE-primers factor into the 1994/1995 obsolete policies and procedures that were suppose to be published mid-February -2021?</p>	<p>The updates to the 1995 MWBE Contract Compliance Policies and Procedures are still in draft form. The proposed policy change presented by OBO Director Marsha E. Murray at both the December 16, 2020 and March 22, 2021 Economic Development Committee Meetings represented a 25% credit towards contract goals for certified primes, rather than 100 percent credit. Once a final determination is made about the percentage of MWBE prime-level credit allowed, the draft policies and procedures will be finalized.</p>
<p>3 OBO - Key issues with OBO response to Feb. 23rd Joint Committee: OBO has yet to clearly spell out what actions it takes if the contractors especially the Primes decide to jettison the good faith approach towards contracts awarded to them by the city. An Example is the Howden Roots contract where deliberate actions were taken over time by the Prime contractor to thwart the ideals of the Diversity program of COH (all with clear evidence) with complicity from some key members of OBO.</p>	<p>The Office of Business Opportunity (OBO) works to ensure that certified firms have equal access to City of Houston contracting opportunities and that their utilization on contracts is maximized after a contract has been awarded. To this end, OBO serves as an advocate for certified firms listed on contracts with goals. Good faith efforts assessments occur throughout the life of a contract, including upon the submission of deviation requests, when formal audits are conducted, and when inquiries are made regarding the contract. A final good faith efforts assessment is conducted at the end of a contract, taking into account the totality of the circumstances regarding the efforts to maximize the use of MWBE goal-credit subcontractors.</p>

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<p>OBO - OBO does not also state clearly what happens when Primes disregard their instructions for Mediation between them and their subs when issues of such arise. Does this not render the ability of the OBO to ensure and enforce compliance of City contracts by the contractors along the Diversity program of 4 COH redundant? Is that why the OBO is unwilling to approach Howden?</p>	<p>The Office of Business Opportunity takes Primes' willingness to participate in mediations requested by certified subcontractors into account in the final good faith efforts assessment that is conducted at the end of a project. The results of this assessment are considered in the proposed final contract rating. However, once the work on a contract is complete and all authorized dollars are expended on a contract, there are no remedies to be sought by a subcontractor, absent civil remedies available outside of the City of Houston relating to their privity of contract with the Prime contractor.</p>
<p>OBO - On the issue of elapsed contracts. It is strange that OBO should allow contracts that are fraught with discrepancies to go without proper investigations all on the basis that the contracts have run its course? Especially if the contractors (Prime) mostly are awarded and still under similar contracts with the city. An example being the Howden contract who were awarded and are currently carrying out fresh contracts with the city of 5 Houston?</p>	<p>The standard for government race and gender-conscious diversity contracting programs is good faith efforts. To this point, it is important that such programs do not act as quota-based programs that penalize a prime contractor financially for not meeting the goal. Good Faith Efforts are steps taken to achieve a Contract Goal or other requirements which, by their scope, intensity and usefulness demonstrates the bidder's responsiveness to fulfill the business opportunity objective prior to the award of a contract, as well as the contractor's responsibility to put forth measures to meet or exceed the Contract Goal(s) throughout the duration of the contract. A final good faith efforts assessment is conducted at the end of a contract and one of the following ratings is assigned: (1) Outstanding, (2) Satisfactory, (3) Satisfactory due to Good Faith Efforts, or (4) Unsatisfactory. Once the work on a contract is complete and all authorized dollars are expended on a contract, there are no remedies to be sought by a subcontractor, absent civil remedies available outside of the City of Houston relating to their privity of contract with the Prime contractor.</p>

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<p>OBO - The second issue that I would like to raise for city council is that OBO is considering certain policy changes regarding the goal credit for MWSBE firms. Previously, in what could reasonably be viewed as arbitrary, OBO has inconsistently, arbitrarily, and singularly stated that certain minority firms would get a 10% credit for work performed. In other past instances, OBO has stated those firms would get a 2% credit for work performed. Because this has been unfairly applied, I have urged that OBO act fairly and uniformly. To this end, OBO is rewriting its policy, however, our firm and other similarly situated minority firms would respectfully request your input and consideration of these policies as they are being developed. (ref: attached 1995- MWBE Procedures)</p>	<p>Not applicable. (not a question)</p>
<p>OBO - Lastly, in reference to the revision and formulation of policy it becomes very pertinent that City Council takes a more cursory approach to the review and reformulation of the policy introduced by the OBO. Unfortunately, due to certain firms being handled in an arbitrary manner, and certain prior biases or animus being shown, it would be important for the policy development process be open, transparent, and that council be aware and apart of the policy's development</p>	<p>The Office of Business Opportunity (OBO) works to ensure that certified firms have equal access to City of Houston contracting opportunities and that their utilization on contracts is maximized after a contract has been awarded. While OBO advocates for certified firms in this way, staff approach each contract and contractor in a neutral manner, without bias or animus.</p>
<p>OBO - Why is Colette Holt not a part of the conservationist? She is the consultant for the Disparity Study by COH and Harris County.</p>	<p>The City of Houston's Disparity Study is still ongoing. Given that the subject of partial prime level for certified firms is outside the scope of Colette Holt & Associates' consulting engagement, it would be improper for Ms. Holt to participate in these conversations.</p>

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<p>OBO - The big question is still, why was this not brought to the stakeholders and business owners from the beginning? This is too major of an issue to be discussed in a three minute conversation, it affects livelihoods and businesses for generations to come. It needs to be referred back to the committee and should include community engagement and stakeholder input and then brought back to council.</p>	<p>This proposed policy has been raised with a variety of stakeholders and presented to the Economic Development Committee twice for public input.</p> <p>The topic of partial prime MWSBE level credit on City of Houston projects was discussed with the Office of Business Opportunity's Advisory Board members, who represent various business industries including, but not limited to, the following: local contractors associations, minority business enterprises, women-owned business enterprises. The objective of the Office of Business Opportunity Advisory Board is to seek private sector assistance in easing difficulties that may be encountered by MWBEs (Minority and Women Owned Enterprise) and small businesses in accessing City contracts and to improve communication among small businesses, MWBEs, non-MWBEs and the City. Additionally, the Advisory Board works to identify best practices in supplier diversity and procurement practices and to provide recommendations in policies and initiatives for the purpose of creating a fair and equitable government procurement environment.</p> <p>In addition, this topic was presented by OBO Director Marsha E. Murray at both the December 16, 2020 and March 22, 2021 Economic Development Committee Meetings.</p>

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10 OBO - OBO has over 3,000 certified firms, with that number there should be a substantial amount graduating from the program.	Graduation from OBO's MWSBE program is based upon the determination that a company has exceeded the small business size standards for its NAICS codes. Businesses apply for certification in the City's program during various stages of it's lifecycle. As a result, a business may be certified under OBO's program for a number of years without reaching the point of graduation.
11 OBO - Do we have an accurate number of how many graduates from the program that there are?	Since no time period was specified, we will look back to 2015. Since 2015, twenty-one (21) certified firms graduated (as defined in the previous response) from the program.
12 OBO - What is the breakdown of the 5.4%? Construction Services vs Goods and Services vs Professional Services	Construction: 44.9% Professional Services: 19.5% Goods & Services: 35.6%
13 OBO - What is your contact information?	The OBO Director can be reached at director.obo@houstontx.gov .
14 OBO - Thank you for considering local MWBEs to lead projects as prime contractors. I think it is incredibly important to not only ensure local contract dollars stay local via contracting goals, but to recognize that local MWBEs are positioned to lead strategy for local contracts. We also can bring diverse, local voices to that contract management table. Thank you.	Not applicable. (not a question)
15 OBO - This is Felicity Pereyra, founder of Elevate Strategies LLC -- a certified M/WBE from located in Houston.(Thank you for considering local MWBEs to lead projects as prime contractors. I think it is incredibly important to not only ensure local contract dollars stay local via contracting goals, but to recognize that local MWBEs are positioned to lead strategy for local contracts. We also can bring diverse, local voices to that contract management table. Thank you.)	Not applicable. (not a question)

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16 **HAS** - What is the MWBE participation for this project?

Please see table below. (FIS = Federal Inspection Service; AE = Architect Engineer; MLIT = Mickey Leland International Terminal; CMAR = Construction Manager at Risk; PMO = Program Management Office; DB = Design Build; EUL = Enabling Utilities Landside; PMSS = Program Management Support Services)

	ITRP Contracts	Phase	Goal
	FIS AE – HOK Page	Design	30%
	MLIT CMAR - Austin Gilbane JV	Preconstruction	10%
		Construction	30%
	FIS CMAR - Hensel Phelps	Preconstruction	10%
		Construction	20%
	PMO DB - PepperLawson	Construction	30%
	EUL DB – Burns & McDonnell	Design & Precon	35%
		Construction	19%
	PMSS - Parsons HJ Russell	Professional Services	35%
	PMSS - Houston Aviation Alliance	Professional Services	35%