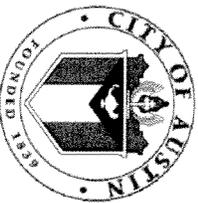


# Proposed Ordinance Changes

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- 2-9(A-D)-21(E)(3) Pre-Award Bid Shopping
  - Prohibit bid shopping pre-award. Bid Shopping is the practice of a prime disclosing a proposed bid to other bidders in an effort to get a lower price
- 2-9(A-D)-25 Sanctions
  - Add “bid shopping” and “unapproved contract changes” as sanctionable violations of the MBE/WBE Program.



# Proposed Ordinance Changes

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- 2-9(A-D)-21(E) and (F) Pre-Award Compliance Procedures
  - Outreach by two methods (e.g., fax, email, phone)
  - Add additional elements to Good Faith Effort assessment
    - **Section (E): Minimum efforts**
      - Breaking out portions of work to increase likelihood goals will be met.
      - Contacting Minority trade associations and other community organizations
      - Advertising in local newspapers
      - Seek guidance from SMBR if having difficulty meeting goals
      - Consideration of whether other bidders/respondents met the goals
    - **Section (F): Additional efforts**
      - Contact MBE/WBES outside “Significant Local Business Presence” (SLBP) area



**§ 2-9A-21 PRE-AWARD COMPLIANCE PROCEDURES.**

(E) Where the Bidder/ Proposer cannot achieve the Goals or Subgoals, its compliance plan shall document its Good Faith Efforts to achieve the Goals or Subgoals. SMBR will determine whether the Bidder/Proposer has made such Good Faith Efforts. In making this determination, SMBR will consider, at a minimum, the Bidder/ Proposer's efforts to do the following:

(1) Soliciting through reasonable and available means the interest of MBEs/WBEs with a Significant Local Business Presence who have the capability to perform the work of the Contract. The Bidder must solicit this interest within sufficient time to allow the MBEs/WBEs to respond to the Solicitation. The Bidder/Proposer must take appropriate steps to follow up initial Solicitations with interested MBEs/WBEs. The Bidder/Proposer must state a specific and verifiable reason for not contacting each certified Firm with a Significant Local Business Presence. For some Contracts, based on criteria to be determined by SMBR in consultation with the User Department and set forth by rule pursuant to Section 2-9A-6 (*Adoption of Rules*), SMBR shall make the initial contact with MBEs, WBEs and DBEs, as the case may be, in which case a Bidder/Proposer's efforts under this Subsection (E)(1) shall not be considered.

(2) Providing interested MBEs/WBEs with adequate information about the plans, specifications, and requirements of the Contract, including addenda, in a timely manner to assist them in responding to a Solicitation.

(3) (a) Negotiating in good faith with interested MBEs/WBEs that have submitted Bids to the Bidder/ Proposer. A MBE/WBE that has submitted a Bid to a Bidder/ Proposer but has not been contacted within five business days of submission of the Bid may contact SMBR to request a meeting with the Bidder/Proposer. SMBR will schedule a meeting between the MBE/WBE and the Bidder/Proposer to facilitate negotiation. If such a meeting does not occur and the MBE/WBE submitting the Bid to the Bidder/ Proposer is not selected, the Bidder/Proposer must explain the reason for not selecting the MBE/WBE and provide written documentation supporting the stated reason. Written documentation of negotiation may include the names, addresses, and telephone numbers of MBEs/ WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for MBEs/WBEs to perform the work.

(b) That there may be some additional costs involved in soliciting and using MBEs and WBEs is not a sufficient reason for a Bidder/Proposer's failure to meet the Goals and Subgoals, as long as such costs are reasonable.

(4) Not rejecting MBEs/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The MBE's/WBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for rejecting or not soliciting Bids to meet the Goals and Subgoals.

(5) It is the Bidder/Proposer's responsibility to make a portion of the work available to MBE/WBE Subcontractors and suppliers and to select those portions of the work or material needs consistent with the available MBE/WBE Subcontractors and suppliers, so as to facilitate meeting the Goals or Subgoals.

(6) The ability or desire of a Bidder/Proposer to perform the work of a Contract with its own organization does not relieve the Bidder/Proposer of the responsibility to make Good Faith Efforts. A Bidder/Proposer who desires to self perform the work of a Contract must demonstrate Good Faith Efforts unless the Goals or Subgoals have been met.

(7) Bidders/Proposers are not required to accept higher quotes in order to meet the Goals or Subgoals.

(F) The following factors may also be considered by SMBR in determining that a Bidder/Proposer has made Good Faith Efforts. These factors are not intended to be a mandatory checklist, nor are they intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases:

(1) Selecting portions of the work to be performed by MBEs/WBEs in order to increase the likelihood that the Goals or Subgoals will be met. This includes, where appropriate, breaking out Contract work items into economically feasible units to facilitate MBE/WBE participation, even when the Bidder/Proposer might otherwise prefer to perform these work items with its own forces.

(2) Making efforts to assist interested MBEs/WBEs in obtaining bonding, lines of credit, or insurance as required by the City or Contractor.

(3) Making efforts to assist interested MBEs/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

(4) Effectively using the services of Minority Person/Women community organizations; Minority Person/Women Contractors groups; local, state, and federal Minority Person/Women business assistance offices; and other organizations to provide assistance in the recruitment and placement of MBEs, WBEs and/or DBEs. It is the Bidder/Proposer's responsibility to seek guidance from SMBR on any questions regarding compliance with this section.

(5) In determining whether a Bidder/Proposer has made Good Faith Efforts, the performance of other Bidders/Proposers in meeting the Contract may be considered. For example, when other Bidders/Proposers meet the Goals or Subgoals, it may be reasonably questioned whether, with additional reasonable efforts, the apparent successful Bidder/Proposer could have met the Goals or Subgoals. Similarly, if the apparent successful Bidder/Proposer fails to meet the Goals, but meets or exceeds the average MBE/WBE participation obtained by other Bidders/Proposers, this may be evidence that the apparent successful Bidder/Proposer made Good Faith Efforts.

SMBR Proposed Ordinance Change Comments  
July 2010

Comments received by SMBR on Proposed Ordinance Changes #4			Place
No.	Date	Comment	Place
1	7/6/10	Obtaining equipment - They have their own equipment. It's a function of their business.	Adv Cmte Mtg
2	7/6/10	One of the 2 in Outreach. Fax machines can be fixed to say it was faxed if it is not. How can staff tell who it's from if it has no names?	Adv Cmte Mtg
3	7/6/10	Unbundling of contracts "good thing" first time prime that would be good.	Adv Cmte Mtg
4	7/6/10	"Consider other bidders" that come frequently when everyone uses same list and some meet goals	Adv Cmte Mtg
5	7/6/10	Bid Shopping is difficult to prove. We don't have access to information they have	Adv Cmte Mtg
6	7/6/10	We need to do more field monitoring once approved. Does SMBR monitor?	Adv Cmte Mtg
7	7/6/10	We have not been able to define Good Faith Efforts. Glad Bid Shopping is pre- and post-award.	Adv Cmte Mtg
8	7/6/10	Pre-award bid shopping - if we add to construction as well. Right now, they give you a dollar amount then they decide to self perform and that would stop.	Adv Cmte Mtg
9	7/6/10	Focus on self-perform when they have you on the contract and the money is spent then they want to self perform.	Adv Cmte Mtg
10	7/6/10	Expand [outreach methods] so subcontractor can find out what the prime is looking for and what he wants.	Adv Cmte Mtg
11	7/6/10	Minimum (E) what's really effective? Advertising in the newspaper? It's a cost issue and it's expensive. Bid Briefs is effective. Moving it to (E) is not very effective.	Adv Cmte Mtg
12	7/6/10	Seek guidance from SMBR. What can SMBR do? Think through examples of what kind of guidance SMBR can offer.	Adv Cmte Mtg
13	7/6/10	Outside the Significant Local Business Presence (SLBP) not being moved. This will be explicit.	Adv Cmte Mtg
14	7/6/10	Outside SLBP is a double edge sword. Lots of firms are coming from all over. We want the big firms to use our people.	Adv Cmte Mtg
15	7/6/10	Obtaining equipment - think it through. There are firms that would take this and make a complaint that someone didn't buy them equipment. It could even be a sub who is trying to add to their asset base. Be careful.	Adv Cmte Mtg
16	7/6/10	Needed effort. Outreach issue will be difficult to solve. Is the number the issue or the extent bidirectional communication. Have I communicated enough to get a response?	Adv Cmte Mtg
17	7/6/10	Look for evidence of bilateral communication rather than listing ways	Adv Cmte Mtg
18	7/6/10	Advertising in local newspapers. Do we want to spell out media? Craig's list is cheaper. We may get more in that medium than the newspaper.	Adv Cmte Mtg
19	7/6/10	Any media online - social media - lots of communication takes place.	Adv Cmte Mtg

SMBR Proposed Ordinance Change Comments  
July 2010

No.	Date	Comment	Place
20	7/6/10	Biggest concern is that we don't give them enough time to respond, because it gives the business owner no time to do best effort.	Adv Cmte Mtg
21	7/6/10	Give a minimum of 3-10 work days. It's not fair to give the best proposal otherwise they are just doing it to say they did it.	Adv Cmte Mtg
22	7/6/10	Advertising is expensive	Adv Cmte Mtg
23	7/6/10	Huge packages	Adv Cmte Mtg
24	7/6/10	Craig's list notice and post package on a website	Adv Cmte Mtg
25	7/6/10	Mail them a package	Adv Cmte Mtg
26	7/6/10	Huge project should have 30 days and post on website	Adv Cmte Mtg
27	7/6/10	Put notice on Craig's list, Facebook and in the newspaper	Adv Cmte Mtg
28	7/6/10	Social media is good for certain professions not necessarily for construction	Adv Cmte Mtg
29	7/6/10	Be careful about who is monitoring for breakout so that SMBR won't be blamed for it.	Adv Cmte Mtg
30	7/6/10	Make sure the monitorer has experience	Adv Cmte Mtg
31	7/6/10	Even though assisting subs with bonds and equipment is in the Ordinance now can we add examples of x, y and z in the equipment section on how we will be able to help?	Adv Cmte Mtg
32	7/6/10	Actual Means - does that belong in the Ordinance? We need to look at cost and time versus effectiveness.	Adv Cmte Mtg
33	7/6/10	We have concerns about whether going outside of the SLBP will be a double edged sword for vendors	Adv Cmte Mtg
34	7/6/10	Aren't goals set on local business presence?	Adv Cmte Mtg
35	7/6/10	We hope the trade associations have an opportunity to speak prior to the public meeting	Adv Cmte Mtg
36	7/6/10	Rehash the suggestions that have been made	Adv Cmte Mtg
37	7/21/10	Bring in Colette Holt - to ensure that it's defensible for public hearing so we don't put our Ordinance in jeopardy.	Adv Cmte Mtg
38	7/21/10	Prime Contractors voiced concerns about contacting vendors by two methods, it is time consuming and some of the contact information is erroneous.	CLMD
39	7/21/10	Instead of adding two contacts can we also include some sort of language or check box asking the vendors if they wish to bid or not so that the prospective bidder can fax back informing the prime knows they are interested.	CLMD Session
40	7/21/10	Can we have something that says that if a sub is not interested let the prime know so that they will not continue to contact?	CLMD Session
41	7/21/10	Vendors should include vendor number and certification information to save time when submitting bid responses?	CLMD Session

SMBR Proposed Ordinance Change Comments  
July 2010

No.	Date	Comment	Place
42	7/21/10	Prime contractors should contact vendors as early as possible.	CLMD Session
43	7/21/10	Vendors should express interest as soon as possible and contact prime contractors if they have any questions.	CLMD Session
44	7/21/10	Can SMBR start to include email addresses on availability list?	CLMD Session
45	7/21/10	Include email addresses on pre-bid sheets all the time	CLMD Session
46	7/21/10	Let SMBR and CLMD know if the solicitation is missing subcontractor opportunities or additional scopes of work that can be added.	CLMD Session
47	7/21/10	Can prime contractors also add their email addresses on their paperwork that they fax to potential subcontractors?	CLMD Session
48	7/21/10	Concerns were raised over the proposed ordinance change of contacting vendors outside of the Significant Local Business Presence (SLBP) i.e. Travis, Williamson, Hays, Caldwell, and Bastrop counties for certified vendors. Other Texas cities have a local business preference and the City should try to give the work and the monies to local tax-paying business owners as much as possible.	SMBR Session
49	7/21/10	It was also expressed that going outside of the SLBP would increase the chances of performing Good Faith Efforts in technical areas in which Austin has no availability.	SMBR Session
50	7/21/10	It was suggested that Jan Lawson at Austin Energy be contacted to see if she could assist with training in technical areas in which there is a need for certified vendors such as asbestos, lead and weatherization	SMBR Session
51	7/21/10	Use SMBR and the trade associations as resources.	SMBR Session
52	7/21/10	If Prime contractors presented the bid opportunities earlier that would give subcontractors more time to prepare and to look into other requirements such as insurance.	SMBR Session
53	7/21/10	Bid Briefs is an electronic newsletter that has over 400 subscribers in the Construction and Construction services area. Bidders can also use Bid Briefs to contact vendors.	SMBR Session
54	7/28/10	Concerns about defining Bid Shopping in the Rules and clarifying that it is a Sanctionable Violation. Believe that the market eliminates bid shopping.	AGC
55	7/28/10	It would be better if SMBR used their database to send out notices to all of the certified vendors so that Prime Contractors don't miss anyone	AGC
56	7/28/10	Recommend the City have a policy in which all subcontractors were also required to attend pre-bids.	AGC
57	7/28/10	Consider making the bidding process less time consuming and streamlined. It is very time consuming and a lot of work. There has to be easier ways to do it.	AGC

SMBR Proposed Ordinance Change Comments  
July 2010

No.	Date	Comment	Place
58	7/28/10	One prime hosts a networking event for subs interested in bidding on contracts they are bidding. Recommend considering that as a part of GFE.	AGC
59	7/28/10	It is recommended that if a subcontractor wants to bid a job they should find out which primes pulled the job and submit bids to them.	AGC