

CITY OF MINNEAPOLIS

Civil Rights – Contract Compliance Division

Contractor Training

City's Vision

Minneapolis is a growing and vibrant world-class city with a flourishing economy and a pristine environment, where all people are safe, healthy and have *equitable opportunities for success* and happiness.



Training Overview

- Division Director Welcome & Introductions
- Division Overview
- Major Updates
- Business & Workforce Inclusion – Panel
- Responsible Contractor Legislation



Division Overview



The Division ensures that City of Minneapolis procurement of construction and development services, commodities and supplies, and professional and technical services includes women, minorities, and low income workers and businesses. The Division also ensures that workers on construction and development projects are paid in accordance with prevailing wage laws.

Division Program Areas

- **Minority and Women Business Inclusion**
 - Administer the Small and Underutilized Business Program (SUBP)
 - Ensure minority and women owned businesses participate in City procurement
 - Conduct outreach to and certify women and minority owned businesses
- **Affirmative Action**
 - Ensure adherence to Affirmative Action and Equal Employment Opportunity Laws
 - Review and approve Affirmative Action Plans
 - Enforce construction workforce inclusion goals
- **Low Income Residents and Business Inclusion**
 - Administer City's HUD Section 3 Program
 - Ensure low income resident inclusion on Section 3 covered projects
 - Conduct outreach to and certify businesses and low income residents as Sec. 3
- **Labor Compliance**
 - Monitor and enforce prevailing wage laws and Federal Labor Standards
 - Ensure workers are paid according to City, State and Federal laws
 - Investigate underpayments and recover wage restitutions for workers

Common Abbreviations

- **CCD** – Contract Compliance Division (of Civil Rights Department)
- **MDCR** – Minneapolis Department of Civil Rights
- **CPED** – Department of Community Planning and Economic Development
- **GFE** – Good Faith Efforts
- **SUBP** – Small and Underutilized Business Program
- **MnUCP** – Minnesota Unified Certification Program
- **MBE** – Minority-owned Business Enterprise
 - Small, local, & MnUCP certified
- **WBE** – Woman-owned Business Enterprise
 - Small, local, & MnUCP certified

Major Updates

- Compliance Philosophy
- Pre-construction book
- Labor Compliance
- Monthly Compliance
- Non-Compliance
- Section 3 Collaboration



Compliance Philosophy

Staff will strive to be subject matter experts who educate and foster collaboration with stakeholders, while holding them accountable to civil rights laws so that women, minority and low income workers and businesses are consistently and fairly included in City procurement

EDUCATION – COLLABORATION – ACCOUNTABILITY

New Pre-construction Book

- Excel Workbook (consisting of 4 tabs)



- Detailed instructions included
- New Contractor Profile Form (combines “Wage Certification Report” and “Contractor Hours Form”)
- New List of Subcontractors (combines the “Project Hours Form”, “List of Subcontractors” and “Estimated Work Schedule”)
- Removes the LCPtracker Online Reporting Form

Labor Compliance

- Collaborations
- Joint monitoring efforts
 - HUD Office of Labor Relations
 - MHFA
 - Unions and Fair Contracting Foundation
- Change in monitoring labor compliance on non Davis-Bacon projects



Monthly Compliance

- Compliance Officer's monthly compliance duties
 - See checklist in materials
- New Monthly Compliance Report
 - See template report in materials



Non Compliance

All contractors must comply in good faith with all ordinances, rules and regulations enforced by MDCR. Failure to adhere to such obligations may result in withheld payment, the denial of future contracts, liquidated damages, or other remedies.

- Process Improvements
- Developing remedies and sanctions based on ordinance and regulations
- Complaint Investigation Division
 - Discrimination Complaints
- Responsible Contractor Legislation

Section 3 Regional Collaboration

- Reduce bureaucracy
- Single web portal for all stakeholders to access
- Single application
- Single directory (or list)
- Standardize compliance requirement



Good Faith Efforts (GFE): Business Inclusion

Civil Rights Pre-Award Review Process

City Construction Projects

Purchasing receives bids, and notifies CCD of apparent low bidder.

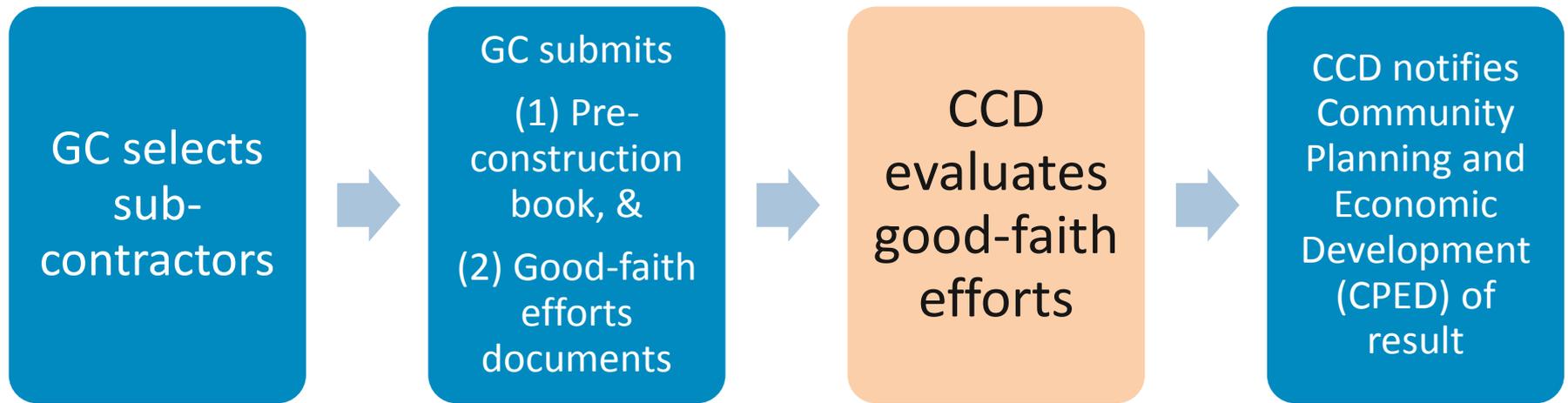
CCD conducts pre-award review. This includes Good-faith efforts reviews.

After review, CCD notifies Purchasing. Purchasing may then award contract.

Good Faith Efforts (GFE): Business Inclusion

Civil Rights Review Process

City Development Projects



Good-faith efforts (GFE): Business Inclusion

- Small and Underutilized Business Program (SUBP)
 - Race and gender based subcontracting goals
 - Designed to redress past discrimination
 - City Ordinances Chapter 423
 - Applies to construction contracts over \$100k on City construction or development projects
- **Contractors and developers must:**
 - **Meet the goals**
 - OR -
 - **Show GOOD FAITH EFFORTS (GFE) to meet the goals**

Good-faith efforts (GFE): Business Inclusion

IF SUBP goals are met, and minority/women-owned business participation can be verified,

Then good-faith efforts (GFE)
are presumed, and

No further GFE analysis is performed.

Good-faith efforts (GFE): Business Inclusion

If SUBP goals are not met, then we evaluate GFE.

Good faith efforts, defined:

GC “must make every necessary and reasonable effort to subcontract work to MBEs/WBEs in advance of (bid date).”

City Ordinances 423.90(g).

Good-faith efforts (GFE): Business Inclusion

During GFE analysis, CCD *may* consider whether GC:

- Solicited MBEs/WBEs through all reasonable and available means
- Broke work into smaller units to facilitate MBE/WBE participation
- Provided MBEs/WBEs with adequate information
- Negotiated in good faith
- Used reasonable resources to comply with SUBP
- Provided MBEs/WBEs assistance with bonding, insurance or other City requirements
- Effectively used community organizations

Good-faith efforts (GFE): Business Inclusion

- During subcontractor bid solicitations:
 - Use the MnUCP list
 - Use www.mnucp.org
 - Use the GFE Checklist
(Document your solicitations)
 - Review bid documents
(SUBP Special Provisions)

Good-faith efforts (GFE): Business Inclusion

GFE – Common Pitfalls

- Not contacting *all* MBEs/WBEs on the MnUCP list provided by the City
- Not allowing MBEs/WBEs enough time to respond
- Not using the MnUCP Directory (www.mnucp.org)
- “Counting” subs that are not MnUCP-certified
- Not following up with MBEs/WBEs
- Not breaking out smaller units of work
(May be because GC wants to self-perform)

Good-faith efforts (GFE): Business Inclusion

Terms Required in City Contracts

Contractors agree that “the contractor will comply with all provisions of Title 7 of the Minneapolis Code of Ordinances, and with all rules and regulations issued by the director of the MDCR ("director") or the Minneapolis Commission on Civil Rights.”

Up Next

- Good Faith Efforts – General Contractor Best Practices
Presenter - Ryan Meissner – Frana Companies
- Inclusive Hiring – Meeting Construction Workforce Goals
Presenter - Marie Larson – Industry Relations
- Unions, Project Labor Agreements, and GFEs
Presenter - Dan McConnell – Minneapolis Building and Construction Trades Council
- Affordable Housing Trust Bidding Procedures
Presenter - Dustin Brandt – City of Minneapolis CPED
- Apprenticeship Program Requirement
Presenter - Jon Clevenger - City of Minneapolis CPED

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General Contractor Best Practices

Presented by Ryan Meissner (Frana Companies)

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Inclusive Hiring – Meeting Construction Workforce Goals

Presented by Marie Larson (Industry Relations Manager)

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Unions, PLAs, and Good Faith Efforts

Presented by Dan McConnell (Minneapolis Building and Construction
Trades Council)

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AHTF Bidding Practices

Presented by Dustin Brandt (Senior Construction Management
Specialist)

Affordable Housing Trust Fund Program Bidding Requirements

THE CITY ENCOURAGES PROCUREMENT TRANSACTIONS TO BE CONDUCTED IN A MANNER THAT DEMONSTRATES REASONABLE DEVELOPMENT COSTS AS WELL AS PROVIDING FULL AND OPEN COMPETITION.



Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

➤ **Sealed Bids:**

- This is the preferred method for general contractor selection
- Publicly advertise for sealed bids to be publicly opened at a pre-determined date/time
- Successful bidder selection is based on the lowest responsive responsible bidder

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

- **General Contractor Request for Qualifications (RFQ) with sealed bids for General Contractor selection:**
 - Publicly advertise RFQ to create a short list of at least 3 general contractors
 - The prequalified general contractors submit a sealed bid to be publicly opened at a pre-determined date/time
 - Successful bidder selection is based on the lowest responsive responsible bidder
 - General contractor is not involved in creating plans or specifications

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

- **General Contractor Request for Qualifications (RFQ) with sealed bids for Subcontractor selection:**
 - Publicly advertise RFQ to select a general contractor
 - Selected general contractor publicly advertises a Request for Proposals (RFP) soliciting bids from subcontractors
 - Successful bidder selection is based on the lowest responsive responsible bidder

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

➤ Advertisement Publication

- Must be published in Finance and Commerce twice for a minimum of one week each
- Bid packages are to be made available at applicable labor union trade organizations or regional council offices
- Require CPED staff review prior to advertising
- Affidavits of publication must be provided to CPED

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

➤ Bid Opening

- Require CPED staff attendance
- Provide sign-in sheet, bid tally and bids to CPED
- Faxed or emailed bids prohibited
- General Contractor may self-perform work if they disclose their intention and submit a separate sealed bid

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

- Design-Build Projects are Prohibited
- **Competitive Bidding is Preferred**
 - At least three competitive bids are preferred when a competitive process is used to select a general contractor or subcontractor

Affordable Housing Trust Fund Program Bidding Requirements

General and Subcontractor Selection Methods

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Apprenticeship Program Policy

Presented by Jon Clevenger (Residential Finance Manager)

Apprenticeship Program Policy

- Administered by Community Planning and Economic Development Department.
- Adopted by City Council (in 2004) for City development projects funded through Affordable Housing Trust Funds and Emergency Shelter Grants.
- Policy requires developers and contractors to hire workers that are trained or are being trained through a Registered Apprenticeship Program certified by the State of Minnesota, Department of Labor and Industry Bureau of Apprenticeship.
 - Applies to subcontractors with subcontracts over \$50,000.
- Contractors must provide evidence of enrollment in an apprenticeship program which is registered by the State.
- Because the AHTF and ESG require publicly overseen bidding processes, the evidence enrollment is required **to be submitted as part of the bidding materials**.
- The evidence will be required to be submitted as part of the bidding materials.
- Policy also applies to other types of City assistance but submission requirement may be different depending on whether there is a requirement for a publicly overseen bidding process.

CITY OF MINNEAPOLIS

RESPONSIBLE CONTRACTOR LAW

Presented by Gary Winter (Assistant City Attorney)

What contracts are subject to the responsible contractor law?

- Construction projects
- In excess of \$50,000
- Financed or owned by a public contracting authority including:
 - University of Minnesota
 - Minnesota State Colleges and Universities
 - Metropolitan Council
 - Metropolitan Airports Commission

What contracts are subject to the responsible contractor law?

4. Municipalities including the following:

- Cities
- Towns
- Counties
- School Districts
- HRAs, EDAs, Port Authorities
- Minnesota Sports Facilities Authority
- Joint Powers entities
- Special Districts
- Drainage Authorities
- Watershed District
- Destination Medical Center Corporation (Rochester)
- Any other municipal corporation or political subdivision that is authorized to enter into contracts.

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What is a construction project?

- Any project that involves the construction, alteration, remodeling, repair or demolition of buildings, highways, roads, bridges, or real property
- Real property improvements is broad and includes, but is not limited to, parking, parks, sports facilities, theaters, wharves or docks, drainage ditches, etc.
- The construction project must be awarded by competitive bidding or the best value process as described in Minnesota Statutes, Section 471.345

Is a funding agreement between a municipality and a developer subject to the law?

- Not likely as the municipality is entering into a loan or other agreement with the developer to provide a source of financing
- The actual “construction contract” is between the developer and a contractor



Who is a “responsible contractor?”

Any contractor, subcontractor or motor carrier that meets the following “minimum criteria”:

- In compliance with workers’ compensation and unemployment insurance requirements
- In compliance with the Department of Revenue registration requirements
- In compliance with the Department of Employment and Economic Development registration requirements
- Has filed a certificate of authority to transact business in the State of Minnesota with the Secretary of State if it is domiciled in another state or country

Contractor must also verify during the three-year period before submitting its bid or response that it had not violated any of the following laws:

- Minimum wage law (Minnesota Statutes, Section 177.24)
- Overtime wage law (Minnesota Statutes, Section 177.25)
- For State of Minnesota projects, prevailing wage and maximum working hours (Minnesota Statutes, Sections 177.41-177.44)
- Prompt payment of wages upon discharge of an employee (Minnesota Statutes, Section 181.13)
- Prompt payment of wages to employees who quit or resign (Minnesota Statutes, Section 181.14)
- Misrepresentation of the employment relationship such as classifying as an independent contractor or causing a worker to sign a document misclassifying the status of the worker (Minnesota Statutes, Section 181.722)
- For federally financed projects, compliance with the minimum wage and maximum hours of the Fair Labor Standards Act (29 U.S.C. Sections 201-209)

How are these violations measured over the three-year period?

- Two or more separate and distinct instances of failure to pay required wages and any penalties assessed under statutes where the total underpayments equal at least \$25,000
- Has been issued a final order to comply by the State Commissioner of Labor and Industry
- Has been issued at least two determination letters by the Department of Transportation finding an underpayment of wages by the contractor to its own employees
- Has been found by the State Commissioner of Labor and Industry to have repeatedly or willfully violated any statutes over which the Commissioner has authority to enforce

How are these violations measured over the three-year period?

- Has received a ruling or findings of underpayment by Wage and Hour Division of the U.S. Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Law Board
- Has been found liable in court of underpaying wages and non-payment of penalties or of having misrepresented that a construction worker is an independent contractor
- Has not violated the State Building Code by having been issued a final administrative or licensing order by the Commissioner of Labor and Industry (Minnesota Statutes, Chapter 363B)
- Has not more than twice had a certificate of compliance for an affirmative action plan revoked or suspended by the Commissioner of Human Rights (Minnesota Statutes, Section 363A.36) and had the revocation or suspension upheld by the Office of Administrative Hearings or the final order of the Commissioner is not appealed

How are these violations measured over the three-year period?

- Has not received a final determination assessing a monetary sanction from either the State Department of Administration or Department of Transportation due to failure to satisfy:
 - Targeted group business goals
 - Disadvantaged business enterprise goals
 - Veteran-owned business goals
 - Lack of good faith effort more than twice



How are these violations measured over the three-year period?

- Is not currently suspended or debarred by the federal government, the State of Minnesota or any of the State's departments, commissions, agencies or political subdivisions that have debarment authority-
- Has not proposed to include as part of the bid or response to a call for bids or responses, any subcontractor or motor carrier that has not verified that it has also been a responsible contractor during the previous three years

When does the three year period for measuring violations begin?

- For the four “minimum criteria” (workers’ comp and unemployment insurance, registration with the Department of Revenue and Department of Employment and Economic Development and for non-Minnesota contractors or sub-contractors that have to register with the Secretary of State) as of January 1, 2015
- For the other criteria, the measurement period began on July 1, 2014 and any previous violations are not counted

Do counties, cities and towns have to enforce who is a responsible contractor?

- Other than obtaining an affidavit or verification from the contractor, no
- However, since the law includes the provision that includes the debarment or suspension of a contractor by federal, state or local governmental entities, the monitoring of hours and wages by the State Department of Labor and Industry, the licensing of contractors and subcontractors by other agencies and departments of the State of Minnesota, if another party challenges the content of a contractor's, subcontractors or motor carrier's verification of compliance, the municipality is obligated to conduct an investigation to determine whether or not the allegations of the third party are true

Who is likely to challenge the contents or statements contained in a contractor or subcontractor's verification of compliance?

- Another contractor or subcontractor that was not awarded a contract through the competitive bid process.
- Labor organizations that are aware of members that have had payment issues with contractors or subcontractors.



Can a contractor evade this law by creating affiliated or replacement legal entities such as a new corporation or limited liability company?

- The law attempts to address this possibility by making it applicable to related entities such as affiliates under the control of a contractor such as parent and subsidiaries, companies where an individual who was part of a previous “irresponsible contracting firm” is a part of the ownership interest of the new firm
- The City will review Secretary of State filings for businesses if a third party alleges that a firm has directors or officers who were members of a previous firm that is now subject to violations of the responsible contractor law

Does the prime contractor have to submit verification certificates from its intended subcontractors and motor carriers at the time it submits its bid?

- No, but the contractor is obligated to submit the subcontractors' affidavits if requested by the city prior to the award or signing of the contract for the construction project
- Each subcontractor must prepare a verification of compliance certificate and provide it to the prime or general contractor. (Section 16C.285, subd. 5)
- The prime or general contractor is obligated to submit the subcontractors' verification of compliance affidavits if requested by the city prior to the award or signing of the contract for the construction project. (Section 16C.285, subd. 5)

Are the verifications for motor carriers the same as for subcontractors?

- No motor carriers must annually provide to each contractor or subcontractor or that the motor carrier contracts with a signed verification statement that the motor carrier complies with the section 16C.285, subd. 3 “minimum criteria”. (Section 16C.285, subd. 5a)
- Motor carriers include a business or individual that provides for-hire transportation of materials, equipment or supplies for construction project. (Section 16C.285, subd. 1 and 5a)