



## Procurement Standards Board Minutes

### Special Call Meeting

June 20, 2019

Members attending: Ms. Talia Lomax-O'dneal, Chair, Mr. Jon Cooper, Mr. Don Hardin, Ms. Shannone Raybon, Ms. Cynthia Croom

Others present: Ms. Michelle Hernandez Lane, Procurement Division; Ms. Terri Troup, Procurement Division; Ms. Jerval Watson, BAO; Mr. Christopher Wood, BAO; Ms. Macy Amos, Department of Law; Ms. Nicki Eke, Department of Law

#### **Chairman Lomax O'dneal called the meeting to order.**

Ms. Lomax-O'dneal stated she appreciated everyone attending today's special call meeting.

#### **Review of Proposed Equal Business Opportunity – EBO Regulations R4.46**

Ms. Lomax-O'dneal confirmed with Ms. Eke that the regulations are consistent with the law. Ms. Eke stated she has reviewed and they are consistent with the law. Ms. Lomax O'dneal asked how public comment was solicited. Ms. Lane stated public comment was solicited by the website and emails were sent from the BAO mailbox. Ms. Lane reviewed comments that were in the handouts. Ms. Lomax-O'dneal stated it is important for the board to go through each comment.

#### **Comment #1**

Will bids be segmented into smaller task/work projects where feasible? Yes

Will MWBE subcontractors be allowed to participate in upgrade, change order or contract extension associated with the original subcontract agreement? Yes, based on total contract value.

Will Good faith efforts of prime contractors include requiring them to notify MWBE subcontractors about subcontracting opportunities at least 10 days prior to bid closing? Mr. Wood is working on good faith statements that have a specific time.

Will prime contractors be required to pay subcontractors within net 15-30 days of work complete, when invoiced and what penalties will prime face if payment is not made within the required timeframe? Beyond scope, language in standard contract is for 14 days.

## **Comment #2**

It would be helpful to hear directly from Metro about IDIQ contracts and not have to rely on the prime contractor to make a decision regarding whether the project falls under a subcontractor's scope without our review. Ms. Lane believes they are trying to say they need to know how they are going to be used before contract is in place.

The percentage and fee should be submitted by the prime contractor to Metro as part of the proposal package unless there is a reason for it to be determined at another point in time.

Prime contractors should undergo a formal and periodic audit or another review process throughout the project's duration to ensure contractors are meeting their EBO goals. BAO will have 6 positions for compliance monitoring

## **Comment #3**

In reviewing the EBO regulations I did not see where departments that fail to honestly engage in this program to contract with these vendors will suffer any consequences for their failure to do so. If department heads see no negatives for non-participation – or “rewards” for participating – how will the EBO succeed? Mayor Briley will make sure departments know how important this is. Departments need to be fully trained. Departments are required to comply.

## **Comment #4**

Would like to see buyer's fair. This has been scheduled.

Workshops and outreach has been completed

Advance level workshop is in process.

## **Comment #6**

Do not support the addition of project-by-project goal setting, not enough qualified firms. Goals are set based on market availability.

## **Comment #7**

You do not explicitly state that you accept TDOT DBE certification. We do accept TDOT, it is listed on the approved entities list.

The pay to play certifications like NWBOC or WBENC are rarely used by government agency. Please do not go this route, \$400 a year. There are free certifications that we accept, there are options.

Go to multi-year certification. Some already are multi-year.

## **Comment #8**

Project goals, sanctions and penalties. Will be addressed during discussion of regulations.

## **Comment #9**

This is what we are trying to do, no actionable items.

EBO will go live on July 5. Ms. Eke stated BAO will make recommendation to the purchasing agent for sanctions. Sanctions can be appealed to the Procurement Standards Board. Mr. Hardin asked what does sanction look like? Ms. Lane stated that if not in compliance BAO would make a recommendation the Purchasing Agent. Will look at code and severity. Could be cancellation of contract or ban from work. Mr. Hardin asked about subcontractors. Mr. Cooper stated the action would have to be against the prime. Ms. Lomax-O'dneal asked what would happen if the prime doesn't pay/use the subcontractor? Ms. Eke stated that was beyond what Metro can do legally. Mr. Hardin stated that this is what we need to fix. Ms. Lane asked if subcontractor can bring claim against the prime? Mr. Cooper and Ms. Lomax-O'dneal replied yes. Dr. Croom stated that we need to know before contract is complete if subcontractor is not being used. Ms. Raybon asked if that was assured to be part of the program. Ms. Lane replied yes, it is part of the new system. Ms. Eke stated that the code does have language for purchasing agent authority and monitoring. Dr. Croom stated a formal mechanism for annual feedback from MWBE's should be in place. Mr. Cooper stated final language needs to be approved today. Ms. Lane stated anytime payment is made the prime and subcontractor is notified. Ms. Lomax-O'dneal stated in item F, the word needs to be changed from annually to monthly basis. Dr. Croom stated that we need feedback specifically from subcontracts, it could be a survey. Ms. Raybon asked if it should be in the regulations? Dr. Croom replied the program is for the subcontractors, why should it not be in the regulations? Mr. Cooper moved to approve regulations and add language Dr. Croom suggested. Seconded by Ms. Raybon. Mr. Cooper moved to add the following language: Utilize mechanism to obtain feedback from MWBE subcontractors regarding the EBO process, effectiveness and ease of use. Ms. Lomax-O'dneal seconded. Dr. Croom stated it is up to Ms. Lane to design mechanism and other components. Mr. Cooper moved to amend Sub L – add reference to the code. Seconded by Mr. Hardin. Dr. Croom asked if on page 5 last paragraph should add purchasing agent and designee? Ms. Lane stated the code states purchasing agent gives final approval. Ms. Lane asked if her delegation should include this? Mr. Cooper replied yes, delegation would need to be updated. Ms. Lomax-O'dneal asked why on page 5 contract forecasting is the CDO? Ms. Lane replied that it is in the code. Mr. Hardin asked if we can get forecasting to them more often? Mr. Cooper stated factors in both operating budget and capital projects, concept of forecasting is important, not sure how to tie down. Mr. Hardin asked if we can require a written utilization plan? Ms. Lane replied no, utilization plan is required in bid, letter of intent is required in two days listing MWBE to be used. Dr. Croom asked if on page 6 in 2<sup>nd</sup> paragraph is that all MWBE's or registered? Ms. Lane replied her interpretation is no – not just registered. Mr. Cooper moved to approve as amended. Seconded by Mr. Hardin.

## **Review of Proposed Ethics Regulations R4.48**

Ms. Lomax-O'dneal stated she didn't see an opportunity to show that people had seen them. Ms. Lane stated the delegated purchasing authority includes the previous ethics standard. Mr. Hardin moved to approve. Seconded by Mr. Cooper.

**Review of Proposed Updates to Delegating Purchasing Authority**

Delegated purchasing authority format will be determined by the purchasing agent. The regulations state the amount that can be delegated. No procurement can be split to get under \$25,000. Mr. Cooper moved to approve. Seconded by Dr. Croom.

**Aspirational Goal Consideration**

Ms. Lane stated aspirational goals are based on MWBE availability and went over the chart in the handouts. Mr. Hardin asked how this is different from goal setting? Ms. Lane replied that you look at each line to determine, it is more detailed and specific. Aspirational goal is 5 years. Mr. Cooper moved to adopt aspirational goals. Seconded by Mr. Hardin.

Ms. Lomax-O'dneal stated that the next item is not on the agenda. Will need a special call meeting to review the EBO Goal Setting Methodology. Meeting will be June 25<sup>th</sup> at 1:00.

**Adjournment – Ms. Talia Lomax-O'dneal, Chair**

Chair Talia Lomax-O'dneal moved that the meeting be adjourned. Receiving a second and unanimous vote, the meeting was adjourned.

Respectfully submitted,

  
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Judy Cantlon

**APPROVED:**

  
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Talia Lomax O'dneal, Board Chair