

CITY OF MINNEAPOLIS

## Civil Rights – Contract Compliance Division

# Developer and General 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.



# Today's Agenda

- *Director's Welcome and Updates*
- *City of Minneapolis Small and Underutilized Business Program (SUBP) and How to Comply with SUBP Requirements*
  - *Sean Skibbie, Contract Compliance Division, MDCR*
- *Navigating City Purchasing: Tips & Guidelines*
  - *William (Bill) Parrill, City of Minneapolis Purchasing*
- *Prevailing Wage Requirements*
  - *Gene Kelley, Contract Compliance Division, MDCR*
- *Workforce Roundtable Discussion*
  - *Yolanda McIntosh, Elaine Valdez, Karin McCabe*
- *Closing Remarks & Exit Survey*

# Division Program Areas

- ***Minority and Women Business Inclusion***

- Administer the Small and Underutilized Business Program (SUBP)
- Work with other City departments to encourage minority and women owned businesses participation 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

- ***Workforce Inclusion***

- Ensure minority and women workers participate on City projects
- Enforce construction workforce inclusion goals (20% female, 32% minority)
- Work with City Departments and stakeholders to conduct outreach to and promote hiring of minority and women workers

- ***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

- ***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

# Division Updates

- Workforce Goal Update
  - City construction goals are now 20% female and 32% minority
- SUBP Updates
  - Disparity Study Completed in March 2018
  - New Small Business Certification Portal
  - SUBP Firm Replacements/Substitutions after Contract Award

# Workforce Inclusion

- Every City construction and development project has workforce goals of:
  - 20% of the total project trade hours to be performed by females
  - 32% of the total project trade hours to be performed by minorities
- Contractors must be making good faith efforts to reach these goals.



# Workforce Inclusion

- Pre-construction booklet requires contractor commitments for workforce inclusion
  - The Division may request additional information related to contract commitments.
- Applies to labor trades working on the construction site
- City's 2016 outcomes: 5% female, 21% minority
- 2017 (through Q3): 5% female, 23% minority

## Small and Underutilized Business Program: Business Inclusion

- Small and Underutilized Business Program (SUBP)
  - City Ordinances Chapter 423
  - Applies to contracts with over \$100k in City funding
- **Contractors and developers must:**
  - **Meet the goals**
    - OR -
  - **Show GOOD FAITH EFFORTS (GFE) to meet the goals**

# SUBP Goal Setting

- Factors to weigh in goal setting calculations:
  - Scopes of work involved in project
  - SUBP firm availability
    - MnUCP certified in NAICS code(s) on the project
    - Within 11 county market area
  - Size of the project
  - How the project will be bid, completed, other project-specific factors

# SUBP Goal Setting

## Each Project is Reviewed for Two SUBP Business Goals:

1. MBE, AND
2. WBE

- If there is not sufficient availability, subcontracting opportunities, etc., for two separate goals, the Division may set one combined contract goal.
  - Combined = both MBE and WBE firms can be applied to the contract goal

# SUBP Goal Setting

- Every project with SUBP goal(s) has a list of firms that is included in the bid documents.
  - This list is a snapshot of firms available: it is not intended to be an exhaustive list.
  - Use the MnUCP Directory (and its new functionality) to find firms.
    - <https://mnuce.metc.state.mn.us/>

# SUBP Good Faith Efforts

## Civil Rights Pre-Award Review Process

### City Construction Projects

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

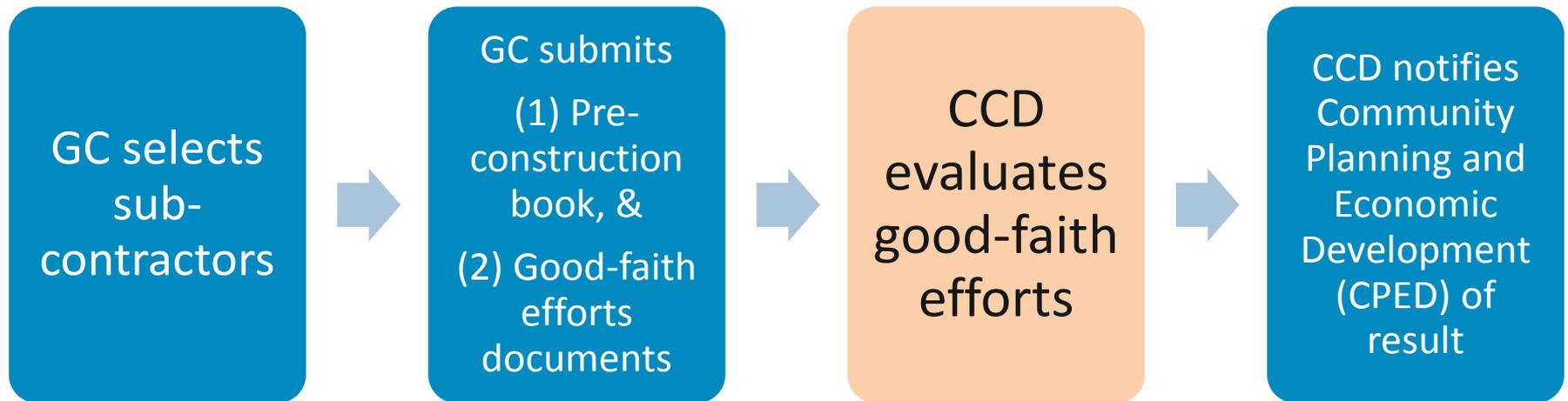
CCD conducts pre-award review. This includes Good-faith efforts reviews.

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

# SUBP Good Faith Efforts

Civil Rights Review Process

## City Development Projects



## SUBP Good-faith efforts

**IF** SUBP goals are met, and minority/women-owned business participation is verified, then *no further GFE analysis is performed.*

If the SUBP goal is not met, a GFE review is triggered.

*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).

## SUBP Good-faith efforts: Factors

- 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
- Showed why MBE/WBE firms that were rejected based on price were unreasonably high
- Provided MBEs/WBEs assistance with bonding, insurance or other City requirements
- Effectively used community organizations

## SUBP Good-faith efforts: Factors

- Did GC solicit MBEs/WBEs through all reasonable and available means?
  - Use the MnUCP Directory (and the SUBP checkbox)
  - Does not include pro forma solicitations
- Did GC break work into smaller units to facilitate MBE/WBE participation?
  - Especially important on larger projects
  - Remember: all MnUCP firms must be certified not just as MBE or WBE but as small businesses

## SUBP Good-faith efforts: Factors

- Did GC provide MBEs/WBEs with adequate information?
  - Solicitation email should list the scopes of work on the project.
  - Provide info like bid deadlines, timeline for the work, location of the project, contact info for further questions
- Did GC negotiate in good faith with MBE/WBE firms?
  - More than just price; scopes of the bid, breaking up firm quotes in to smaller scopes, etc.
  - Especially important when MBE/WBE firms express interest and give GCs time to review quotes

## SUBP Good-faith efforts: Factors

- Did the GC show why firms were rejected?
  - Usually price, requires cost reasonableness evaluation
  - Apples to apples comparisons (and explanations of them) are important to document; include accepted/rejected quotes
- Did GC provide bonding assistance?
  - Bonding typically only required for GC, good thing to negotiate with potential firms
- Did GC use community organizations?
  - NAMC and AWC are listed right on the MnUCP list; not specific requirements, many different organizations work in this area.

## Good-faith efforts (GFE): Common Mistakes

### GFE – Common Pitfalls

- Not using the MnUCP Directory – results in:
  - Not soliciting all firms in all the project’s NAICS codes
  - “Counting” subs that are not MnUCP-certified
  - Spending time negotiating with firms certified in other programs that will not count towards SUBP
- Not following up with MBEw/WBEs
  - Remember: bidder’s responsibility to negotiate, offer assistance with bidding/bonding
- Not breaking out smaller units of work  
(May be because GC wants to self-perform)

## SUBP Requirements During Contract Completion

- May not replace, self-perform, or otherwise decrease the amount of work committed to an SUBP firm prior to contract award without CCD approval.
  - SUBP commitments are a material condition of the contract.
  - Forms/instructions available on website.
  - Based on dollar commitment for each firm; based on percentage for each contract.
    - Be aware of percentages being reduced because of change orders or other increases to the contract cost.
    - SUBP good faith efforts: required throughout the life of the contract.

## SUBP Requirements During Contract Completion

- MBE/WBE Total Payment Affidavit
  - Required to verify SUBP compliance: the Division does not close project file until this is complete.
- REMEMBER: Prompt payment requirements apply to all firms, not just SUBP firms

## SUBP Mentor-Protégé Program

- Opportunity to create a MnUCP-recognized partnership with a MnUCP-certified firm; can
  - Build relationships to help meet SUBP contract goals/GFE
  - Expand capacity of SUBP firms; teach new scopes/NAICS codes, improve quality of work
  - [www.dot.state.mn.us/civilrights/mentorprotege.html](http://www.dot.state.mn.us/civilrights/mentorprotege.html)

# Thank you

Questions?

Minneapolis Department of Civil Rights

Contract Compliance Division

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