

AUSTIN CITY CLERK
POSTING: DATE/TIME

2009 OCT 9 PM 4 15

POSTING DATE: 10/9/09 TIME 4:15p

NOTICE OF PROPOSED AMENDED RULES

The Director of the Small & Minority Business Resources Department (SMBR) proposes to adopt the following amended rules the 31st day after the date of posting.

Comments on the proposed rule are requested from the public. Comments should be submitted to Veronica Briseño Lara, SMBR Acting Director, 4201 Ed Bluestein Boulevard, Austin, Texas 78721 (512) 974-7014 or emailed to DSMBR@ci.austin.tx.us. To be considered, comments must be submitted before November 9, 2009, the 32nd day after the date this notice is posted. A summary of the written comments received will be included in the notice of rule adoption that must be posted for the rule to become effective.

EFFECTIVE DATE OF PROPOSED AMENDED RULES

A rule proposed in this notice may not become effective before the effective date established by a separate notice of rule adoption. A notice of rule adoption may not be posted before the 32nd day after the date of this notice or not after the 90th day after the date of this notice.

If a proposed rule is not adopted on or before the 90th day after notice of the proposed rule is posted, it is automatically withdrawn and cannot be adopted without first posting a new notice of a proposed rule.

TEXT OF PROPOSED RULE

A redline copy of the complete text of the proposed amended rules is available for public inspection and copying at the following locations. Copies may be purchased at the locations at a cost of ten cents per page:

Small and Minority Business Resources Department, located at 4100 Ed Bluestein Blvd., Austin, TX 78727-2390 or website <http://www.ci.austin.tx.us/smbr>; and

Office of the City Clerk, City Hall, located at 301 West 2nd Street, Austin, Texas.

The proposed amended rules amend Section 11.5, relating to sanctions for noncompliance with the MBE/WBE Procurement Program.

BRIEF EXPLANATION OF PROPOSED RULE

The proposed amended rules accomplish the following:

- Section 11.5: Revisions to Sanctions for Noncompliance. This section has been revised to provide the Director the discretion of determining the type of violation that will be issued dependent upon the number of violations that had occurred at any given time. Additionally, SMBR may recommend the following revised sanctions to the Purchasing

Department that the city enforce sanctions for each successive violation within a rolling 24 month period:

- o 1st Violation: probation for a period of up to 6 months;
- o 2nd Violation: suspension for a period of up to 24 months;
- o 3rd Violation: debarment for a period of up to 5 years.

The rule would still require a prime contractor or prime consultant to submit a written request for an appeal to the Director within 4 days of receipt of the written notice of the violation.

AUTHORITY FOR ADOPTION OF PROPOSED RULE

The authority and procedure for the adoption of a rule to assist in the implementation, administration, or enforcement of a provision of City Code is established in Chapter 1-2 of the City Code. The authority for the Director to formulate, propose, and adopt rules for the development, implementation and monitoring of the Minority-Owned and Women-Owned Business Enterprise Procurement Program is established in Sections 2-9A-10, 2-9B-10, 2-9C-10, and 2-9D-10 of the City Code.

CERTIFICATION BY CITY ATTORNEY


By signing this Notice of Proposed Rule, the City Attorney certifies the City Attorney has reviewed the rule and finds that adoption of the rule is a valid exercise of the Director's administrative authority.

REVIEWED AND APPROVED



Veronica Briseño Lara, Acting Director
Small & Minority Business Resources Department

Date: 10-9-09



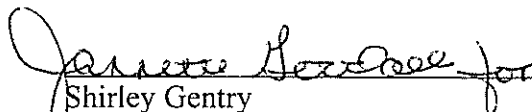
Karen Kennard, First Assistant City Attorney, for
David Allan Smith, City Attorney

Date: 10/9/2009

This Notice of Proposed Rule was posted on a central bulletin board at City Hall on the following date and time:

Date: 10/9/09

Time: 4:15 p



Shirley Gentry
City Clerk

11.5 Sanctions for Noncompliance

11.5.1 Failure to obtain prior authorization for substitutions, additions or deletions of subcontractors as provided for in this Section is a violation of the MBE/WBE Ordinance. DSMBR may recommend to the Purchasing Department that the City enforce the following sanctions for each successive violation within a rolling twenty-four month period:

1st Violation: Probation for a period of up to 6 months

2nd Violation: Suspension for a period of up to 24 months

3rd Violation: Debarment for a period of up to 5 years

If the prime contractor/consultant engages in more than one of the above actions (i.e., unauthorized substitutions, additions, and deletions) at any given time, the Director has the discretion to determine whether such actions should be counted as multiple violations of the MBE/WBE Ordinance.

~~11.5.2 In order to dispute a finding of a violation, the prime contractor or prime consultant must submit a written request for an appeal to the Director within 4 days of receipt of written notice of the violation.~~

Deleted: 1st Violation: Written notice of violation¶
2nd Violation: Probation for a period of up to 6 months¶
3rd Violation: Suspension for a period of up to 24 months¶
4th Violation: Debarment for a period of up to 5 years¶

Section 12: Contract Closeout

12.1 Within 7 business days of receipt of contract close-out documents the Director shall notify in writing the Contract Awarding Authority that the contractor/consultant has paid all uncontested amounts to subcontractors/subconsultants and has fulfilled the contract's terms related to the MBE and WBE commitments or that additional time is required to determine whether the contractor/consultant has fulfilled the contract's terms.

12.2 If the Director determines that the contract's terms have been fulfilled, the Contract Awarding Authority, contract manager or project manager may authorize final payment and close out the contract in accordance with City's procedures.

12.3 If the Director determines that the contractor's terms have not been fulfilled, the Director shall inform the Contract Awarding Authority and the contractor/consultant in writing of the reasons for the determination, the sanctions recommended, and the procedures to appeal the determination. If the recommended sanction contains any fine or liquidated damages, the Contract Awarding Authority, contract manager, or project manager shall retain from any payment due the amount of such sanction during the pendency of an appeal.