

CITY COUNCIL
City and County of Denver

City & County Building
1437 Bannock Street, Room 493
Denver, CO 80202



Phone: 720-337-7710
Fax: 720-337-7717
Email: wayne.new@denvergov.org

WAYNE NEW
Councilman, District 10

November 13, 2017

Dear Colleagues:

Attached is a copy of the proposed Best Practices Ordinance that recommends improvements to the billing and payment processes associated with the use of small, minority, and women business enterprise (SBE / MBE / WBE) subcontractors in City construction contracts. The recommendations listed below have references to the proposed Ordinance for your review. A PowerPoint presentation is also included to give you background and more detailed information. In case you would like to reference the 2014 Revised Ordinance, it is also attached.

The following are brief explanations of the five (5) recommendations for improvement and three (3) areas of current City policy and practices which will be emphasized. These were included in the Ordinance after much analysis, discussion, and advice of subcontractors, contractors, OED DSBO staff, legal counsel, and other City agency representatives over the past year.

Proposed Ordinance Recommendations

1. Billing and Payment Tracking Process (Ordinance, Page 3, Section 3 (d)) – This important process will identify, collect data, and monitor all billing and payment activities related to certified SBE / MBE / WBE subcontractors participating in City construction contracts. The information and process have been tailored after the existing, successful RTD compliance process.

This is a communication / tracking process between SBE / MBE / WBE subcontractors and OED Division of Small Business Opportunity (DSBO) which will occur at the same time as the current 30-day request for payment billing cycle. It is totally separate from the billing process and will not interfere with any payment activity or timing. Data on the various activities in the billing process will be collected in the tracking process and entered into the DSBO B2G Compliance System.

The tracking process conforms to DSBO's present collection and entry of compliance data on all SBE / MBE / WBE subcontractors. The tracking process compliance data will now be more comprehensive and capture all activities in the billing and payment process, making this data transparent where it previously had not been. This lack of transparency, at times, led to payment problems for SBE / MBE / WBE subcontractors.

Billing request and payment process data that is presently or will be collected is as follows:

- Prime contractor information (name, address, contact person, and telephone)

- MBE / WBE subcontractor information (name, address, contact person, telephone, email address, and certification number)
- Contract information (report for specific month, contract reference number, contract name, and date executed)
- Subcontract information (services, task order number or work order number)
- Original subcontract amount
- Change order amount and approval date
- Current subcontract amount
- Payment received in current month
- Total payments received
- Percent of work completed
- Billing request rejection date and reason for rejection
- Past due invoices (invoice date, reference number, number of days past due, and amount outstanding)
- Comments

2. Early Completed Work Retainage (Ordinance Page 4, Section 28-74) – 5% or more of all billing requests by SBE / MBE / WBE subcontractors are withheld by the City and contractor to ensure the completion of construction project work. Some SBE / MBE / WBE subcontractors perform and complete their work within the first months of the project.

Even though their work is completed, the withheld retainage is not released to the SBE / MBE / WBE subcontractors until the total project is complete. This may mean waiting 18 to 24 months (or longer) for payment. Because cash flow is critical for small businesses, it is recommended that the City follow the State policy on releasing retainage for early construction work voluntarily upon the recommendation of the project contractor.

3. Linkage of Letters of Intent with Construction Schedule (Ordinance Page 2, Section 2 (b)) – There have been instances where SBE / MBE / WBE subcontractors have not been given letters of intent to perform designated City contract construction work, as required by the 2014 Revised Ordinance. This recommendation will require that all letters of intent are documented and aligned with the project schedule report that must be submitted to the DSBO Director five days after project work has commenced. Any discrepancies between the letters of intent and the actual work schedule will be monitored and reviewed for corrective action by DSBO.

4. Retaliation (Ordinance Page 4, Section 5 (4)) – There have been instances where SBE / MBE / WBE subcontractors were intimidated into making payment adjustments for the advantage of another party. Furthermore, there have been threats of retaliation related to a SBE / MBE / WBE subcontractor's ability to participate in future construction projects. This type of behavior will be prohibited in City construction projects.

5. DSBO Evaluation (Ordinance Pages 1 and 2, Section 1) – An independent evaluation of DSBO operations and support of the SBE / MBE / WBE subcontractors is recommended. This evaluation will ensure that the department has sufficient resources, skills, and training to fully carry out its responsibilities as required in the 2014 Revised Ordinance. The evaluation would include:

- Program goals, responsibilities, and staffing necessary to fulfill all minority compliance ordinance requirements and accomplish annual goals;

- Documentation on total SBE / MBE / WBE completed work payments for each program participant and their relationship to established SBE / MBE / WBE achievement goals;
- Monitoring of SBE / MBE / WBE subcontractor billing and payment process procedures as currently established and required by this ordinance;
- Number of certified SBE / MBE / WBE companies and their participation in City contracts over a defined period of time to establish a relevant participation trend;
- Number of SBE / MBE / WBE educational activities and mentorships, the number of participants, and an evaluation of the educational programs. Education relates to small business management and the following systems: building information management system, LCP Tracker, Textura payment system, and B2G Now.

“Whereas” 2014 Ordinance Important Areas of Emphasis

In addition to the five ordinance recommendations above, there are three important **existing policy and practice areas** that are emphasized in “whereas” language on page 1.

(1) Payment for Approved, Completed Work – It is clear in the 2014 Revised Ordinance that SBE / MBE / WBE subcontractors are to be paid fully for approved, completed work in every City construction project. The use of the billing and payment tracking process will make all approved work, and its payment, transparent for review. The lack of full payment for completed, approved work related to an individual change order or a combined group of change orders will need to be explained and reviewed for compliance.

(2) Timing of Payment for Completed Work – There have been instances where payment to SBE / MBE / WBE subcontractors has been significantly delayed. As mentioned earlier, cash flow is extremely important, so data related to the timing of all billing and payment activities will be collected in the billing and payment tracking process and monitored for any needed improvement or corrective action by DSBO.

(3) End of Project Retainage – After the project has been fully completed and all final construction approval requirements, as specified in the Construction Regulation “Yellow Book”, have been fulfilled all SBE / MBE / WBE subcontractor retainage for approved, completed work should be released following the City’s 35-day prompt pay process. Reasons for delays in payment greater than 35 days will be recorded and monitored in the billing and payment tracking process. Follow-up action may be required by DSBO.

Proposed Timetable for Ordinance Approval:

- **November 29** – City Council Committee Business, Arts, Workforce & Aeronautical Services (BIZ) – Ordinance Presentation and Public Hearing
- **December 5** – Mayor / Council Meeting Bill Inclusion
- **December 11** – City Council – 1st Reading
- **December 18** – City Council – 2nd / Final Reading / Approval
- **January – February 2018** – DSBO Education and Training
- **March 1, 2018** – Implementation for All New and Existing Contracts and Participating Certified SBEs / MBEs / WBEs

Data Collection: As mentioned earlier, these recommendations do not constitute additional work for DSBO that is not already required by the 2014 revised Ordinance. DSBO is currently collecting information on each individual SBE / MBE / WBE subcontractor in the B2G compliance system, so they anticipate that the additional data collection will not be any more difficult than using a manual system.

Data Submission: To maintain the important direct relationship between the SBE / MBE / WBE subcontractors and DSBO, it will be the responsibility of the SBE / MBE / WBE subcontractors and DSBO to submit and enter all required billing and payment activity data into DSBO's B2G compliance system. Sufficient orientation, training, and supervision on data entry accuracy will be required by DSBO. Contractors will no longer have to enter billing and payment data into the B2G compliance system. There will be sufficient time for training prior to a March 1, 2018 implementation date.

City Council Compliance Reporting: As required by the 2014 Revised Ordinance but presently not being performed, quarterly reports on compliance progress will be developed and sent to the City Council BIZ Committee by DSBO.

Councilwoman Ortega, Councilman Kashmann, and I are confident these changes will help support the growth and development of the City's SBE / MBE / WBE subcontractors. With the large number of construction projects anticipated in the future, promoting an increase in participating subcontractors will be extremely important for the construction industry.

If you should have any questions, please contact us. We encourage your attendance at the November 29th BIZ Committee meeting and would appreciate your support in approving this ordinance and its important SBE / MBE / WBE compliance recommendations for improvement.

Sincerely,

Councilman Wayne New
District 10