

Inclusive Procurement and Contracting Board Meeting Minutes

Date: July 16th, 2024 | Time: 5:30 pm | Location: Microsoft Teams (Virtual) & TRC
1165 Franklin Street, Suite 100, South Bend, IN 46601

Link: <https://tinyurl.com/ipcboardmeeting>

❖ **Call to Order-** The IPC Board is now called to order on July 16th, 2024, @ 5:30 p.m.

- BOARD MEMBERS PRESENT: Keana Baylis, Michael Morris, Rachel Tomas-Morgan, Murray Miller, Cynthia Simmons-Taylor, Breanna Allen, Kimberly Hurt, Kara Boyles
- BOARD MEMBERS PRESENT VIRTUALLY:
- DIVERSITY & INCLUSION: Bianca Jones
- PURCHASING:
- LEGAL: Michael Schmidt
- BOARD MEMBERS ABSENT: Jeff Rea Wilbur Boggs

❖ **Approval of Minutes:**

June 2024 minutes – Miller motions to approve / Allen seconded
All Ayes not Nays

Notes:

I. Procurement:

Simmons-Taylor presented the procurement report.

June's PublicWorks spend is \$3,145,224.27 with no M/W/MWBE prime spend. She noted that the M/W/MWBE spend with sub-contractors is over \$245,000 for the month of June

Baylis – Questioned, are we nearing meeting the 6% goal given that we are in the 7th month and Who's responsibility it is to monitor the numbers.

Simmons-Taylor – Stated that some projects we are hitting the 6% and some we are not.

She continued that after discussion with Schmidt, we are looking to display percentages for clarity. Regarding the number monitoring responsibilities, it is ODI and IPC Board responsibility. However, everyone on the ODI team is responsible for monitoring the numbers.

Baylis – Asked how is ODI watching the numbers and what can the board do to assist?

Simmons-Taylor – She is monitoring, the ODI office is holding the certification sessions, and working to increase the capacity of minority and women owned businesses.

Baylis – Inquires if we can use only certified businesses to a certain percentage? Is it possible to set criteria like grants?

Simmons-Taylor – Stated that we currently assign goals to projects to ensure we are meeting a certain percentage on each project. However, if we do not have the capacity in our wheelhouse and Prime really try to find businesses to engage with then we can offer a good faith effort waiver.

Schmidt – Stated that guidance from above we can't have an all or nothing standpoint because there isn't always availability. Which is why we have those good faith effort waivers. From a practical standpoint the city has also has to take into consideration they can't let projects sit in perpetuity and not get done if there is no availability. There are about 70%-80% of the PW projects have goals on them and if they don't meet the goals, we still push them to meet goals. He continued to state the city does not have the legal authority to operate like grants or private funding that only look for certified businesses. We can do something like that in Neighborhoods when they apply for a grant, and we can say a specific service for this neighborhood only.

He identified a program ODI is working on that would identify smaller PW project to get smaller businesses involved. The hope is to develop those small businesses and get them to become a viable entity that can do business with the city.

Simmons-Taylor – Added that if businesses does not meet the goals, we can still urge them post award to continue to strive to meet them. She continued that some projects may have not been awarded to the lowest bidders because they have not met the goals.

Morris – Asks, can we see a pattern over time of those businesses that consistently do not meet goals and are asking for waivers and if they are using the same businesses every single time.

Simmons-Taylor – Said we can look back and she agrees that the consistent use of the same businesses is not showing inclusivity.

II. Public Works:
DPW Report was given

III. Office of Diversity and Inclusion:

Simmons-Taylor - Darius is no longer with the city and ODI now has a position open for the Contract Compliance Administrator.

She moved to the next item. Notification of non-compliance. She went on to offer her recommendation for Werntz. ODI discovered the non-compliance when the CCA called the sub to confirm if they had been paid, in order for the city to close out the project. Said sub stated they had never been contacted by Werntz and even if offered would have not traveled to South Bend from Evansville for such a nominal dollar amount. ODI sent a letter to notify Werntz and read the letter sent to Werntz identifying the finding of non-compliance on the Ward Bakery project. Werntz's response was that he and another organization found it hard to find MBE contractors and stated it would have been helpful if the city provided names of qualified contractors. He offered to donate to Charles Martin Youth Center for the amount due to the MBE.

After giving this information, she explained that based on the Program Plan, businesses found to be non-compliant can be penalized up to and including the city no longer doing business with them. She acknowledged we are trying to grow the MWBE Program and the current staff offers a certified business list.

Her recommendation was fining Werntz the dollar amount due to the MBE and suggested that the City's ODI office to assist other MWBEs with those funds.

There was other discussion including Schmidt who stated that the board should note the timing on this project and there was a degree of inconsistent messaging on how they were communicating in the expectations in 2022. The prime is responsible for being able to navigate the ins and outs of the program. Now the departments are working to educate and bring more awareness.

Responded to Morris clarifying statement regarding the prime listing Ms and Ws as if he paid them. Schmidt stated that when the prime submitted the bid form if he knew that the bid could have been awarded by seeking a good faith effort waiver. Schmidt then went on to say that ignorance is not a defense but the messaging from the city was not consistent.

Morris - stated that it seems as though the prime's blatantly and without much apology broke the rules and it's our ability to state there are repercussions.

Simmons-Taylor – Stated we make it clear at the pre-bid meeting we expect these primes to meet these goals and if they need help, reach out to our office.

Miller – Inquired what was the change in utilization that was noted in the letters that were read.

Simmons-Taylor - Stated that the change in utilization request was the MBE was non-responsive

Allen – Asked what does the reprimand look like if we are accepting the money or are we blacklisting them? How will that be tracked and what does that look like?

Miller - Inquired if the company was working specifically as a prime and if we ban them as a prime and does that include as a sub. He also stated that the plan does not allow us to assess monetary payments, so that would have to be changed.

Schmidt – Advised that what we can do is hold them in breach of the contract and negotiate the breach, but the plan itself does not levy the power on the board to impose penalties. The expressed language states that the determination could result in the inability to bid on future contracts or a referral to the appropriate city, state, or federal agency. Essentially the board can make a recommendation to the city but not make the final decision.

Miller – Stated the board was not notified of the non-compliance issue when it was discovered. He stated that the board was only notified at the time of close out. He stated that he was trying to understand the process

Schmidt - Stated the board was notified of the potential fraud at the meeting in June when the was discovered as well as notifying JW Wertz.

Discussion continued –

Baylis – Recommended prime be barred for 3-5 years along with payment of monies owed to the MBE and stated that a fine is not enough.

Schmidt – stated if Wertz challenged a life time ban or a multi-year ban for doing business, a judge would rule against us because it is a severe punishment even for a breach of contract.

Morris – Inquired what is the ask of the board at this time?

Schmidt – First thing we would ask is the board make a decision as to whether or not they find JW Wertz non-complaint with the Program Plan and the ordinance on the Ward Bakery project. The next thing that we would ask is that the board make a recommendation as to what they hope the city will pursue; then make a second recommendation as to what the board hopes the city does to enforce this.

Allen – Moves to find JW Werntz non-complaint with the Program Plan with respect to the Ward Bakery Project.

Baylis- Second

6 Ayes – 1 abstained

Miller – Stated that he will abstain also and is not comfortable with not provided with information ahead of time.

Morris suggested that we vote. Motion was revised to reflect 5 ayes and 2 abstained (Miller, Baylis)

There was further discussion for clarity, including Allen's statement that we should consider the time it would take for the city to pursue legal action.

Schmidt went on to say that the enforcement powers of the board are uncertain. Miller again stated that the board should be involved along the way and not just at the penalty stage. Simmons-Taylor again stated that the board was notified at the very first meeting after non-compliance was discovered.

Jones inquired if we should hold an executive session in the future.

Allen motioned that the board recommends to reprimand JW Werntz as it relates to the Ward Bakery project seeking all enforcement as appropriate under the law and under the local ordinance and Program Plan and to report back to the board of the city's ultimate decision. Morris seconded the motion.

7 ayes – motion carries

Morris inquired if non-compliance discover was by accident. Schmidt explained the payment monitoring process and stated that when a prime request final payment ODI staff performs an audit for compliance.

2025 Budget was presented to the board.

Simmons-Taylor covers 22', 23' and 24' budget. She informed the board the 2025 professional services budget will be increased to include the Business Assistance Suite. There was a discussion about the B-Suite's location. Morris inquired about the Mentor to Protégé program and was informed we are looking to roll that out in the near future.

We went over each line item of the 2025 purposed budget for ODI. Morris inquired if we budgeted enough to effectively grow the program. He had questions about the B-Suite and the returns we were getting as well as the possibility of connecting it to a minority contractor.

Jones moved to the updated list of certified businesses which totaled 6 new certified businesses that were participants of the MWBE Certification workshop. Baylis inquired if IMPower is working on certification.

IV. Old Business

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V. **New Business**

- Rejection of FunF/X demolition that has been put out for rebid.
- Rejection of Wastewater CNG Compressor project due to non-responsive bid.

VI. **Announcements**

- 100 Black Men Gala October 26th – ODI can sponsor a table

VII. Floor Open to the Public -

VIII. Adjournment-

Baylis – Motion to adjourn /Hurt – Second

Notes & Action Items