

Creating Pathways to Prosperity for the People of New Orleans

**Disadvantaged Business Enterprise Program
Policy Memorandum 46R Revisions**

March 17, 2015



DBE Program Authorities

City Code

Chapter 70 establishes the DBE program.

City Charter

Protects the City's DBE program in the charter to improve fairness and consistency.

Policy 122R

Establishes OSD's position in the routing of all city contracts

Policy 46R

Establishes compliance reforms within the DBE program.

Executive Order MJL 10-02

Creates a contract review committee for procurements, and commissions a disparity study

Executive Order MJL 10-03

Creates the position of the Director of the Office of Supplier Diversity

Exempt Contracts

- The procurement of immovable property;
- The resolution of any legal claim;
- Cooperative endeavor agreements;
- Any procurement to satisfy declared emergency needs;
- Restoration tax abatement credits for owner-occupied residential properties not exceeding six residential units;
- Any procurement or contract, except those for public works, valued at less than the applicable formal competitive procurement threshold; and
- Any procurement or contract valued at \$15,000.00 or less.



City of New Orleans overall DBE Goal

35%

Achieving our diversity and inclusion goals is the responsibility of every city employee.

City Departments
Agencies
Boards
Unattached Boards
Commissions



Key Program Improvements

1. **Pre-Solicitation requirements**
2. **Good Faith Efforts**
3. **Counting DBE participation**
4. **DBE compliance**
 - » Monitoring system
5. **Non-Compliance**
 - » Sanctions and Penalties



Office of Supplier Diversity

PRE-SOLICITATION REQUIREMENTS



Pre-Solicitation: DBE Specifications

Required Contract Language includes:

- Uniform Instructions for Bids, RFPs and RFQs
- Required DBE Compliance Documents
- Specific Contract Goals
- Specific GFE standards and requirements
- DBE Compliance contract provisions

Note: Procurement will maintain a copy of all required DBE language and compliance forms.



Pre-Solicitation: Goal setting

Goods and Professional Services

- 35% DBE participation goal
- Review on a case by case basis
- DBE Goal deviation request are required prior to the solicitation and must be approved by CAO.

Construction

- Contract by contract basis
- Based on the scopes of work of the contract and availability in those scopes
- Construction Review Committee will review all DBE goal recommendations .

NOTE: The Office of Supplier Diversity is currently conducting a capacity audit of local DBEs to better assess availability of DBEs by project scope in the local market.

Pre-Solicitation: Evaluation Criteria

Evaluation Criteria for RFPs and RFQs

- A minimum of 10 points required for DBE scoring category
- (5 pts) Proposer complied with DBE goals or will conduct good faith efforts to do so.
- (5pts) Proposer submitted a quality DBE Plan that includes creative strategies and approaches to achieve and maintain compliance over the contract term, including firms past performance on meeting DBE goals, technical assistance and supportive services strategies designed to increase participation and build capacity in the DBE community.
- (Bonus) 50/50 Joint Venture Incentive *(At discretion of the CAO)*
- OSD will provide a recommendation with our evaluation of the DBE plan submissions

A quality DBE plan is required at time of proposal submission. No DBE plan, No Review



Engaging Nonprofits

Nonprofit Organizations

- DBE subcontracting opportunities will be reviewed on a case by case basis.
- All City agreements with nonprofit organizations shall include a provision requiring that the nonprofit cooperate with the OSD in its collection of the following data:
 - Identifying the race, gender, disability status, and ethnic composition of its workforce and board of directors,
 - A list of all DBE vendors that the nonprofit currently does business with and may anticipate doing business with as a result of this agreement,
 - The nonprofits written equal opportunity statement, an assurance of the nonprofit's efforts to maintain a diverse workforce and board of directors and operation of a fair and effective supplier diversity program.



Office of Supplier Diversity

GOOD FAITH EFFORTS



Good Faith Efforts: What's New?

What's New

- Good Faith Efforts are monitored throughout the life of the contract.
- No contract is approved without supporting documentation establishing goal attainment or demonstrated Good Faith Efforts. (Supported by Policy 122R)

Key Terms

- **Pre-Award Good Faith Efforts** may be defined as efforts made by the prime vendor/consultant to meet the DBE participation goal prior to the award and execution of the contract.
- **Post-Award Good Faith Efforts** may be defined as efforts made by the prime vendor/consultant to meet the DBE participating goal after the contract has been awarded and executed, but before the project has been completed.

Good Faith Efforts: Review

Detailed Standards

- Identifying specific portions of work for DBE subcontractor(s).
- Notifying certified DBEs of contracting opportunities 7 to 10 days .
- Detailed follow-up on initial solicitation.
- Negotiate in good faith.

Required Documentation

- A completed DBE Form-2 Documenting required Good Faith Efforts
- A copy of the originating advertisement/correspondence which confirms the date the advertisement was published/sent.
- A copy of all correspondence documenting negotiation efforts including written rejection notices and copies of DBE and non DBE quotes.

Good Faith Efforts: Post Award

DBE Commitment

- The DBE percentage should be maintained throughout the life of the project.
- Efforts to meet the DBE participation goal, when subcontracting possibilities remain, should be documented.

DBE Substitutions or Terminations

- DBE cannot be changed or replaced by non-DBEs without Good cause (such as the DBE being unable or unwilling to perform, or for poor performance), not for convenience.
- Primes must receive prior written agency approval.
- The prime may not terminate for convenience an approved DBE and then perform the work of the terminated DBE.
- The replacement DBE cannot perform work on the contract until its work eligibility has been confirmed and any required subcontracts have been approved by OSD.

Office of Supplier Diversity

COUNTING DBE PARTICIPATION



Counting DBE Participation

DBE as Prime

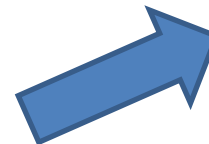
- A DBE can be a Prime (Bidder/Proposer) and count as 100 percent of the DBE goal, provided that the Prime DBE has met the contract goal and has committed to performing that portion of the work with his own forces.



Counting DBE Participation

Reciprocity

- Only DBEs who are currently certified and listed on the SLDBE directory and the web-based Louisiana Uniform Certification Program (LAUCP) database are eligible for DBE participation credit.
- DBEs must be certified in the respective work classification.
- Both directories are linked to the OSD Website at: www.nola.gov



Counting DBE Participation

Commercially Useful Function

In determining whether a certified firm is performing a commercially useful function, factors including but not limited to the following shall be considered:

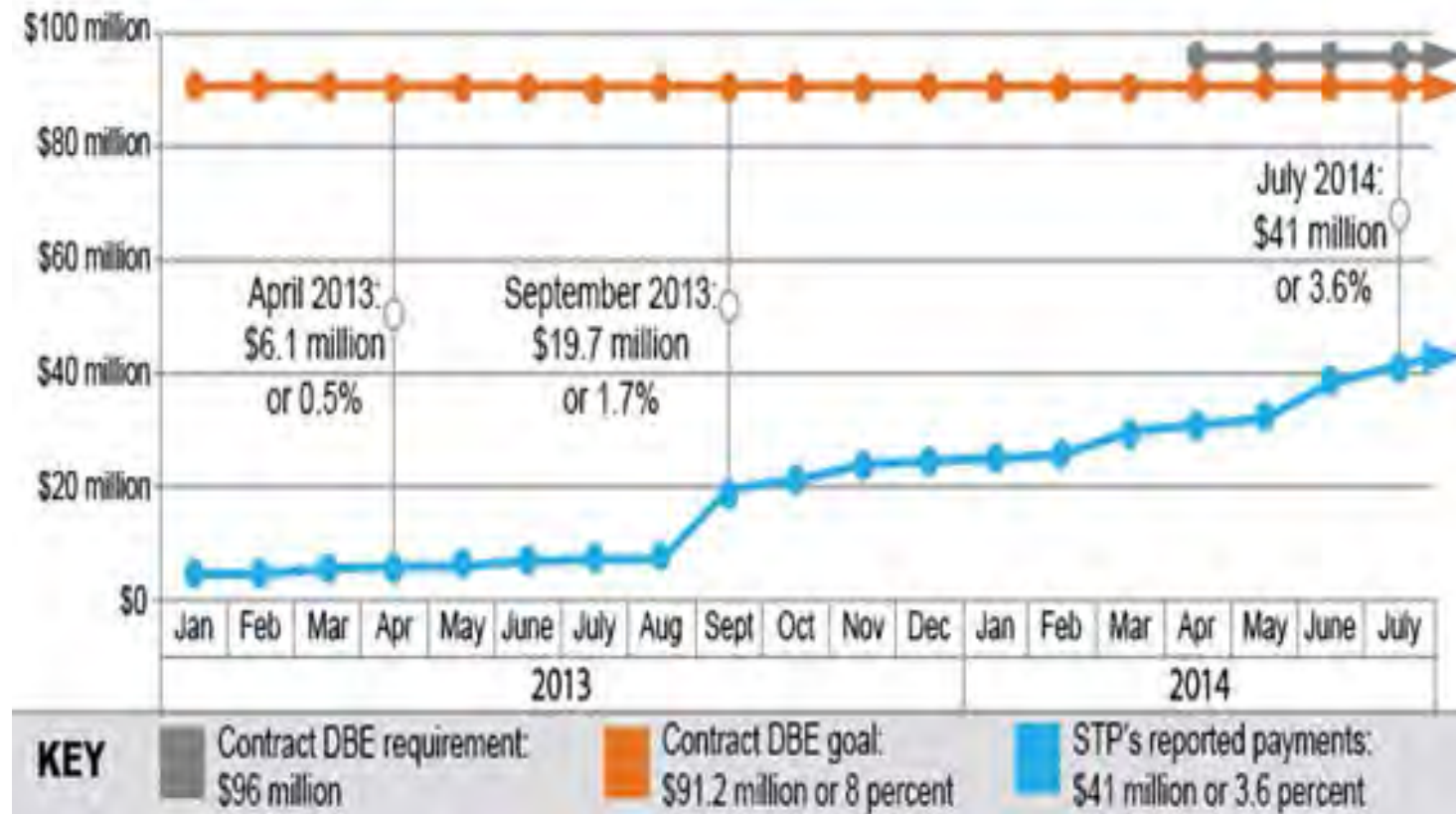
- Whether the firm has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
- Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized; and
- Whether it is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.



Office of Supplier Diversity
DBE COMPLIANCE



Compliance Management System



Accessible to Compliance Administrators, DBEs, Contractors and the public.

Compliance Reporting Across Agencies

Contract Goals & Utilization by Agency

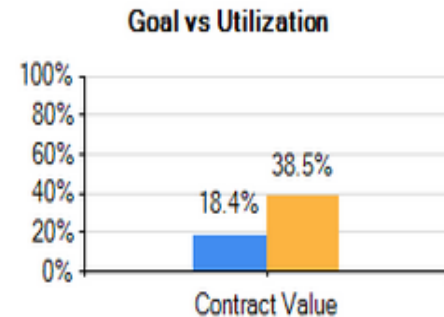
Tabulation of non-exempt/non-excluded contracts awarded,
between 1/1/2010 and
Report run

Organization Name	Contract Awards	MWBE Goal	Total Payments	MWBE Payments	MWBE Utilization
Agriculture and Markets	\$160,601,932	0%	\$0	\$0	0%
Alcohol Beverage Control Board	\$2,515,878	0%	\$0	\$0	0%
Alcoholism and Substance Abuse Services	\$49,579,205	71.54%	\$88,772	\$0	0%
Council on the Arts	\$18,829,502	0%	\$0	\$0	0%
Department of Civil Service	\$3,494,338	0%	\$0	\$0	0%
Department of Correctional and Community Services	\$872,148,185	0%	\$0	\$0	0%
Department of Economic Development	\$9,345,859	291.83%	\$3,204,541	\$1,043,976	32.58%
Department of Environmental Conservation	\$680,102,087	294.09%	\$1,938,852	\$0	0%
Department of Financial Services	\$181,547,555	0%	\$0	\$0	0%
Department of Health	\$4,902,244,676	0%	\$0	\$0	0%
Department of Labor	\$107,112,327	100.27%	\$4,127,623	\$0	0%
Department of Motor Vehicles	\$34,590,282	0%	\$0	\$0	0%
Department of Public Service	\$3,568,254	0%	\$0	\$0	0%
Department of State	\$25,535,707	0%	\$2,230	\$0	0%
Department of Taxation and Finance	\$491,894,357	25.25%	\$2,441,047	\$0	0%
Department of Transportation	\$9,627,291,536	0%	\$0	\$200	Infinity%
Division of Budget	\$40,916,092	0%	\$0	\$0	0%
Division of Criminal Justice Services	\$105,734,479	0%	\$0	\$0	0%
Division of Housing & Community Renewal	\$20,553,691	0%	\$0	\$0	0%
Division of Human Rights	\$882,398	0%	\$0	\$0	0%
Division of Military and Naval Affairs	\$3,434,763	0%	\$0	\$0	0%
Division of State Police	\$38,234,187	0%	\$0	\$0	0%

Department Summary & Contract List

Housing & Community Development

Number of Contracts	193
Total Contract Value	\$50,810,298
Total Payments	\$18,487,504
Total Payments For Credit	\$7,109,822
Goal	18.36%
Utilization	38.46%



Contract Number	Contract Title	Business Name	Date Start	Date End	Status	Contract Value	Payments Total Prime	Payments Total For Credit	Goal	Util.
29426	Lead abatement work at 2784 Tori Drive, Package #7. Term: Execution - 180 days.	Jay C. Construction	7/10/2012	1/1/2200	Open	\$20,900	\$0	\$0	0.0%	0.0%
29302	To rehabilitate property at 3071 Princeton. Term: Execution - 180 days.	Jay C. Construction	5/29/2012	1/1/2200	Open	\$4,437	\$0	\$0	0.0%	0.0%
29185	Change order for additional funds for the rehabilitation of property at 3378 Rangeline. Term: Execution - 180 days.	Jay C. Construction	4/30/2012	1/1/2200	Open	\$1,206	\$0	\$0	0.0%	0.0%

DBE Compliance: Departmental Reporting Requirements

Reporting Requirements

- Sec. 70-462. establishes reporting requirements for all Boards and Commissions
- Reports must be submitted by October 15th of each year.
- Report on DBE goals and attainment rates from previous year.

Report Contents

- The estimated value of all new City contracts awarded during reporting period;
- Of the totals reflected in (a), the estimated value of new City contracts awarded to non-DBEs during the reporting period;
- Of the totals reflected in (a), the estimated value of new City contracts awarded to DBEs during the reporting period; and
- The total percentage of DBE participation on new City contracts during the reporting period.

DBE Compliance: Contractors Requirements

Revisions include but are not limited to:

- Required use of Compliance Management System
- Monthly reporting requirements vs quarterly,
- Prior approval of all DBE substitutions/terminations,
- Inclusion of prompt payment clause in all DBE subcontractor agreements and
- All DBE subcontract agreements must be fully executed within 30-days after contractor's agreement is fully executed.



DBE Compliance: Management System

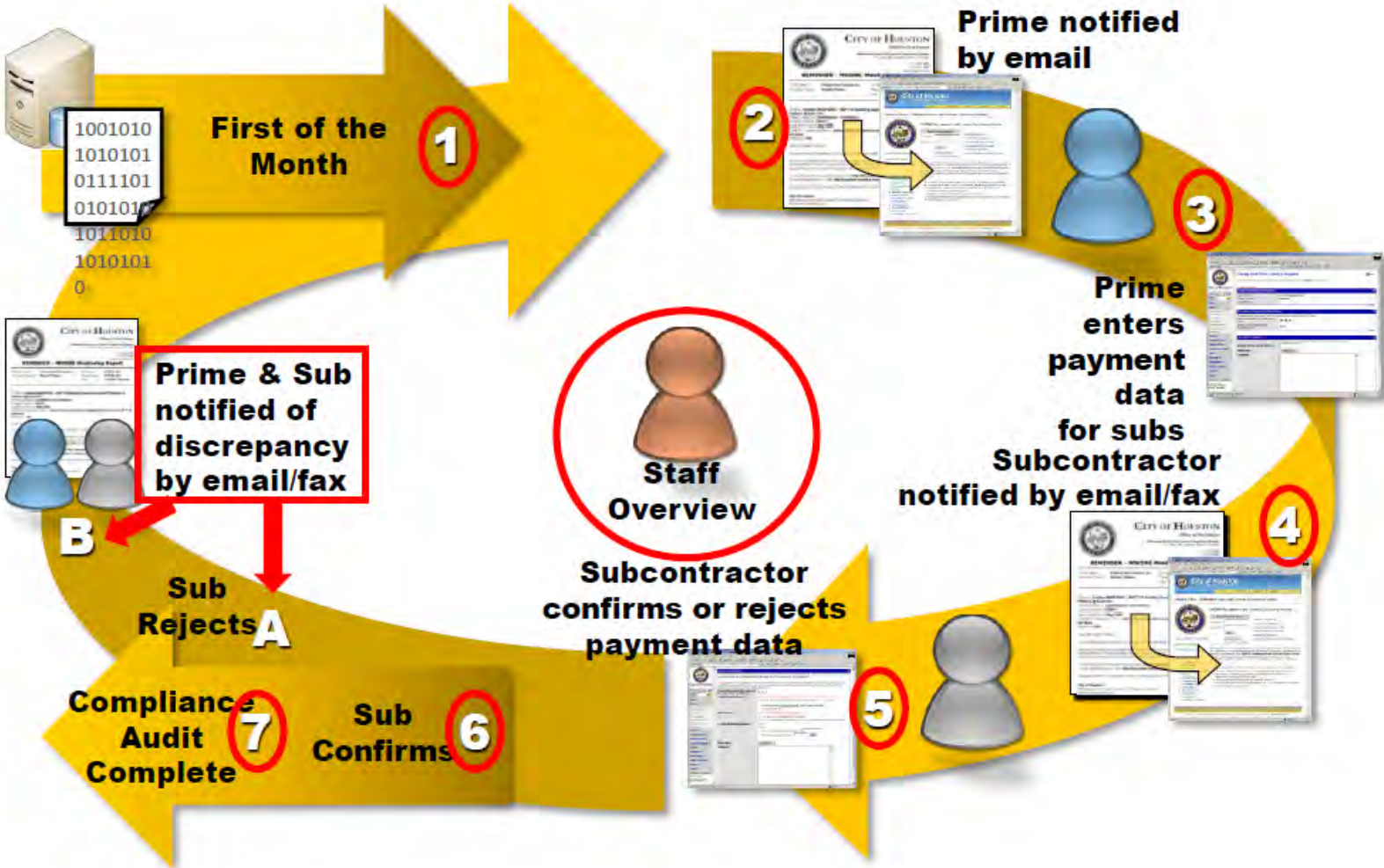


- Direct access to list of certified DBEs
- Communication with contractors via email and fax, regarding compliance issues
- Submission of contractors' monthly utilization reports online,
- Automated tracking of DBE goals
- Automatic DBE verification of payment notices
- Transparency of goal attainment



Contract Compliance Reporting

Audit Process



Prime Contractor Audit Notice

From: The CHA
Date: 4/27/2011 12:32:39 PM
Subject: The CHA: Prime Contractor Compliance Monitoring Report

Chicago Housing Authority [lblTimePeriod] Prime Contractor Contract Compliance Monitoring Report

Contract: [lblContractTitle]
Prime Contractor: [lblPrimeContractor]
Contract Number: [lblContractNumber]
Audit Time Period: [lblTimePeriod]
Contract Compliance Officer: [lblDiversityUser]

Dear [lblContactName],

The Procurement & Contracts monitors participation on all Chicago Housing Authority contracts with goals. To assist our office in the monitoring process, please login to your account in the Vendor Compliance Reporting System and provide the requested subcontractor payment information for [lblTimePeriod].

If you have received this notice, then you are currently listed as a PRIME contractor on an active Chicago Housing Authority contract. You are required to respond to this notice with the payment information requested.

To view the audit notice and respond, visit: <https://cha.diversitycompliance.com/?GO=397>
To view all audit notices, visit: <https://cha.diversitycompliance.com/?GO=753>

PLEASE REFER TO THE BOTTOM OF THIS NOTICE FOR ADDITIONAL HELP

Chicago Housing Authority
Procurement & Contracts
60 E Van Buren
Chicago, IL 60605
Phone: (312) 786-3468

SAMPLE



Audit Notices are sent to the Prime for each reporting period.

Prime Contractor Audit Report

Audit Information	
Time Period	April 2015
Date & Time Posted	Local: 5/1/2015 6:01:37 AM CDT System: 5/1/2015 6:01:37 AM CDT

➔ Submit a response for each item listed below by clicking each link. It is possible that some actions are not available at a specific time. As the **prime contractor** your responsibility is to report payments made to subcontractors.

Audit Actions	
Category	Action Required & Response Due Date
Prime Contractor	Report 3 subcontractor payments due by 5/31/2015 audit lock on 6/30/2015

Compliance Officer Information	
Contact Person	Milwaukee Conversion User
Organization	City of Milwaukee
User Number	30000038-003

Buyer/Project Manager Information	
Contact Person	Contract Administrator
Department	Milwaukee Default Buyer Department
User	10000996-001

DBE Subcontractor Audit Notice

From: The CHA
Date: 4/27/2011 12:36:30 PM
Subject: The CHA: Subcontractor Contract Compliance Monitoring Report

Chicago Housing Authority [lblTimePeriod] Subcontractor Contract Compliance Monitoring Report

Contract: [lblContractTitle]
Prime Contractor: [lblPrimeContractor]
Contract Number: [lblContractNumber]
Audit Time Period: [lblTimePeriod]
Contract Compliance Officer: [lblDiversityUser]
Reference: [lblReferenceIdentifier]

SAMPLE

Dear [lblContactName],

The Procurement & Contracts monitors participation on all Chicago Housing Authority contracts with goals. To assist our office in the monitoring process, please login to your account in the Vendor Compliance Reporting System and provide the requested subcontractor payment information for [lblTimePeriod].

If you have received this notice, then you are currently listed as a SUBCONTRACTOR on an active Chicago Housing Authority contract. You are required to respond to this notice with the payment information requested.

To view the audit notice and respond, visit: <https://cha.diversitycompliance.com/?GO=397>
To view all audit notices, visit: <https://cha.diversitycompliance.com/?GO=753>

PLEASE REFER TO THE BOTTOM OF THIS NOTICE FOR ADDITIONAL HELP



DBE Subcontractor Notification

Audit Information

Time Period	April 2015
Date & Time Posted	Local: 5/1/2015 6:01:37 AM CDT System: 5/1/2015 6:01:37 AM CDT

Submit a response for each item listed below by clicking each link. It is possible that some actions are not available at a specific time. As a subcontractor your responsibility is to confirm payments made to you by the prime or higher level subcontractors.

Audit Actions

Category	Action Required & Response Due Date	
Tier 1 Subcontractor to Prime Contracting, Inc.	Sub: Confirm payment received	due by 6/27/2015 audit lock on 7/27/2015

Compliance Officer Information

Contact Person	Milwaukee Conversion User
Organization	City of Milwaukee
User Number	30000038-003

Buyer/Project Manager Information

Contact Person	Contract Administrator
Department	Milwaukee Default Buyer Department
User Number	10000996-001

DBE Subcontractor Confirmation

Confirm Reported Amount? *

[Show all options and fields](#)

Correct - the amount reported by the prime contractor as PAID to us is correct (\$5,000.00).

1. **Payment Date: *** (mm/dd/yyyy)
» If multiple payments were received, enter the date of the **first** payment.

2. **Were you paid in accordance with the organization's prompt payment policy? ***

» According to our records, the prime contractor was paid on 5/1/2015.

Yes - we were paid within 7 days of the prime being paid on 5/1/2015.
 No - we were not paid within 7 days of the prime being paid on 5/1/2015.
 N/A - we cannot determine if we were paid promptly.

Incorrect - the amount reported by the prime contractor as PAID to us is not correct.

Final Payment? *

No - our work on this contract continues.
 Yes - this is our last payment for this contract.
 N/A - we have not begun work on this project or we have not been paid yet for our work.

Is Prime Withholding Retainage? *


No
 Yes

How much retainage is being withheld? *
» Enter total cumulative retainage being withheld the prime contractor.

When do you expect to receive it? (mm/dd/yyyy)



Payment Discrepancy

Private Comments	
	<p>These comments are visible ONLY to the compliance officer.</p> <p>Ck # 1256 was for \$3,500 which matched our invoice.</p>
Confirmation	<input checked="" type="checkbox"/> Send me confirmation of my response.



Discrepancy Resolution	
Status	Awaiting prime and subcontractor response.

Audit Information	
Audit Time Period	March 2015
Audit Number	01238651-014

Original Audit Data Reported		
Amount Reported by Prime	\$3,400.00	NOT included in Goal
Amount Reported by Subcontractor	\$2,500.00	
Payment Date (Prime Reported)	4/2/2015	
Payment Date (Sub Reported)	4/7/2015	
Retainage Withheld?	No	
Subcontractor Private Comments	Ck #1256 was for \$2500 and matched our invoice	



Non Compliance: Enforcement



The OSD will bring to the attention of the CAO any false, fraudulent, or dishonest conduct in connection with the Program, so that the CAO can take the steps (e.g., referral to the Office of Inspector General, legal authorities including responsibility determinations in future contracts)

- The OSD has implemented a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs.
- The OSD will also conduct periodic site visits to ensure that work committed to DBEs is actually performed by DBEs.
- The City will not release the contractor's retainage until all DBE subcontractors' participation information is reported and the appropriate forms submitted to OSD.
- When the contractor is found to be in non-compliance, and the contractor has failed to make every effort to resolve the issues(s) of non-compliance, the OSD will employ all necessary and reasonable actions to ensure that the DBE requirements are enforced.

Non-Compliance: Findings and Penalties

Non-Compliance Finding(s)

- Whether the failure to comply with applicable requirements involved intentional conduct;
- The number of specific incidences of failure by Contractor to comply;
- Whether the Contractor has been previously suspended;
- Whether the Contractor has failed or refused to provide the City of New Orleans with any requested or required information;
- Whether the Contractor has materially misrepresented any applicable facts in any filing or communication.

Penalties

- Withholding of all or any portion of payments due to the vendor until the non-compliance is cured;
- Liquidated damages;
- Termination of any or all of the Vendor's contracts with the City; and
- Suspension, debarment, or determination of non-responsibility.



Summary

New program structure and policy:

- ✓ Aligns program partners to achieve overall goal of 35% DBE participation
- ✓ Provides for a more strategic and sustainable approach to economic inclusion
- ✓ Establishes unified certification and compliance processes , procedures and reporting requirements
- ✓ Strengthened Good Faith Effort requirements
- ✓ Authorizes city-wide utilization of the City's Contract Compliance Management System
- ✓ Financial Penalties for non compliance
- ✓ Stronger relationships within and outside of City government



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