

Administrative Rule 4 – Reconsideration of Good Faith Effort Review Denials

1.0 AUTHORITY

For the purposes of this Administrative Rule, the Director of Civil Rights has been delegated the authority to adopt, amend, and repeal rules and regulations by the Minneapolis Code of Ordinances § 423.70 (small and underutilized businesses).

2.0 PURPOSE

To provide clarification for the initial and ongoing Good Faith Efforts bidders and contractors must take to ensure the inclusion of ~~women-owned and minority-owned~~ businesses owned by women and people-of-color on City contracts.

3.0 EFFECTIVE DATE

These amended rules shall take effect ~~August 31, 2019~~ October 6, 2018.

4.0 PROCESS TO APPEAL GOOD FAITH EFFORT REVIEW DENIALS

4.1 Responsive Bidder. The bidder or proposer is responsible for submitting all required documentation as instructed by the bid or proposal documents. Any bid or proposal wherein required documents to demonstrate Good Faith Efforts are not completed, signed, and submitted by the deadline will be deemed non-responsive.

4.1-2 Request for reconsideration. The bidder or contractor must submit a written request for reconsideration within five (5) business days of receiving a denial notification letter. The written request must detail the specific reason(s) the bidder or contractor is requesting a reconsideration. If no request is received, the bidder or contractor waives the opportunity to request a reconsideration, unless explicitly excused by the Director of Civil Rights.

4.2-3 Reconsideration meeting. Once a request for reconsideration has been approved, a meeting shall be scheduled no later than fourteen (14) business days from the date of approval. Should the bidder or contractor fail to appear at a scheduled reconsideration meeting, the bidder or contractor waives the opportunity to request another reconsideration meeting, unless explicitly granted by the Director of Civil Rights.

4.3-4 Reconsideration decision. Following the conclusion of a reconsideration meeting, the bidder or contractor will be notified in writing of the Director's decision within five (5) business days.

5.0 FACTORS TO CONSIDER WHEN ISSUING A DECISION

5.1 Documents reviewed. The Director shall consider the record submitted by the Minneapolis Contract Compliance Division and any written position statements submitted by the bidder or contractor. Neither party may produce new information with the purpose of challenging the other if the information was previously available yet not submitted, unless requested by the Director of Civil Rights.

5.2 Factors considered. The Director may evaluate several different factors when reviewing a request for reconsideration. These factors include but are not limited to:

- a) The original Good Faith Effort Review was affected by fraud, mistake, or misconception of fact
- b) Department staff was less than reasonably diligent in conducting the original Good Faith Effort Review
- c) The most reasonable outcome that lies in the best interest of the City as a whole
- d) The totality of the circumstances effecting the bidder's or contractor's inability to satisfy the requirements of the Good Faith Effort Review

6.0 REVERSAL OF GOOD FAITH EFFORT REVIEW DENIALS

6.1 Imposing reasonable conditions. The Director may impose reasonable conditions on the contractor as part of the decision to reverse a Good Faith Effort Review denial. Any agreed upon conditions shall be added as material provisions to the City's contract with the contractor. Examples of such conditions include but are not limited to:

- a) CONTRACTOR will submit updated commitments, an affirmative action plan, and a pre-construction book to Contract Compliance Officer (CCO) by DATE.
- b) CONTRACTOR will identify remaining/upcoming scopes of work to CCO and will conduct additional outreach to MBE/WBE firms around unfulfilled scopes of work. CONTRACTOR will keep CCO apprised of the details of these outreach efforts on an ongoing basis.
- c) CONTRACTOR will submit copies of all paid invoices and lien waivers for all tier levels of contractors to CCO on a bi-monthly basis (exact day to be determined by CCO).
- d) CONTRACTOR will notify CCO within 24 hours of any change orders greater than \$50,000 and/or any change orders or change in project scope that would affect first or second-tier contractors.
- e) CONTRACTOR will notify CCO should the base bid increase, including the amount CONTRACTOR would expense for self-performed work and work performed by first and second-tier contractors.
- f) CONTRACTOR will attend one of the contractor trainings hosted by the Contract Compliance Division on DATE.
- g) Following a review of the updated pre-award commitments, CONTRACTOR agrees to continue ongoing good faith efforts to meet the goals. Any decrease in commitments or substitution of committed MBE/WBE firms will require prior written approval from CCO.

6.2 Enforcement. The Contract Compliance Division shall be responsible for the enforcement of any agreed upon conditions.

6.3 Non-compliance. Should the Division determine that the contractor has failed to meet one or more conditions, the Director may impose any of the non-compliance penalties outlined in Title 16, Ch. 423.120.

7.0 NO RECONSIDERATION FOR NON-RESPONSIVE BID OR PROPOSAL

Failure to submit any required completed and signed documents to demonstrate Good Faith Effort (GFE) by the deadline will result in GFE denial and bid rejection for non-responsiveness. No GFE appeals or reconsiderations shall be granted to a bidder or proposer whose GFE review has been denied for non-responsiveness.