

March 18, 2009

Honorable Michael Murphy, Chair  
Finance and Personnel Committee  
City Hall, Room 205

Re: Common Council File Number 080218 - MORE Ordinance

Dear Alderman Murphy:

As requested in your March 10, 2009, letter regarding the subject file, we have reviewed the current version of the MORE Ordinance relating to participation in City of Milwaukee contracts through the Residential Preference Program (RPP), Emerging Business Enterprise Program (EBE), Local Business Enterprise Program (LBE), and Community Participation in Development projects. The revised and new provisions have been reviewed as it relates to fiscal impacts on contracts administered by the Department of Public Works (DPW) and the following comments are submitted for your consideration.

First, I will comment on the Community Participation in Development projects area of the legislation. For the most part, this does not effect the operations of DPW. In those instances where TID/developer funding or "Out of Program Agreements" help to facilitate any development project, all infrastructure contracts administered by DPW already contain the provisions for Prevailing Wages, RPP, EBE and Apprenticeship programs as specified under current City Ordinances. Inclusion of these requirements on the "private" portion of these development projects will require additional monitoring of the projects. In discussion with the DOA Purchasing Director and DCD, DPW has pledged support of these efforts and is willing to consult with and advise/train staff to aid in the monitoring of these projects as necessary.

We do not anticipate any additional costs to DPW as a result of the increased RPP from 25% to 40%. Currently the RPP employees must be certified to meet the employment requirements and to live within the target area, primarily the CDBG area. Certification is primarily done by Community Based organizations including, Esperanza Unida, Big Step, Milwaukee Urban League and the Private Industry Council and to a lesser extent City staff. Since the RPP target area is expanded to include the corporate limits of the City of Milwaukee, we would expect an initial surge of certification applications which again would be primarily processed by the Community Based organizations previously noted. Once the initial surge is over, we would expect the certification process to level out.

Honorable Michael Murphy, Chair  
Finance and Personnel Committee  
March 18, 2009  
Page 2

The proposed MORE Ordinance provides for an increase in EBE participation from the current 18% to 25%. We would anticipate a slight increase in construction contract costs associated with this change in EBE participation requirements. It is common that General/Prime Contractors include some administration costs for all subcontractors that they coordinate during a project whether they are EBE contractors or not. The requirement for EBE contractor participation prompts these Generals to contract for work that they could in many instances do by themselves. DPW averages about \$50,000,000 in contract work on an annual basis. We currently experience an EBE participation rate of about 21% on our contracts. As such, the ordinance effectively increases the EBE participation rate by 4 percentage points. This equates to an additional \$2,000,000 in contract dollars going to EBE contractors. Assuming a 5% General contractor mark-up for administration of these EBE sub-contracts equates to an additional \$100,000 in construction cost attributable to the increased EBE requirements or about 0.2% based on the annual average of \$50,000,000.

Finally, the MORE Ordinance creates a Local Business Enterprise (LBE) provision that allows a 5% consideration when evaluating the low bid on a contract award. This provision allows that if an LBE is within 5% of the responsible low bid, the contract shall be awarded to that LBE. There is one caveat that limits the amount to be paid over the low bid to \$50,000 or the difference in qualified bids whichever is less. We would anticipate this circumstance to occur, although predicting the frequency is not an easy task due to the many variables that come into play as contractors put together bids for any given contract. In an attempt to reasonably quantify costs associate with this provision, we did examine data from the past 3 years; 2006, 2007 and 2008.

In 2006, DPW awarded 126 contracts of which 34 were awarded to LBE's who were the LOW Bidder. Based on the LBE provisions, the award for 9 contracts would have gone to a contractor other than the LOW Bidder (7%). The total amount difference across those 9 contracts was \$111,281.09 (8 of the contracts accounted for \$61,281.09 (~ \$7,700) and 1 contract where the \$50,000 cap was in effect).

In 2007, DPW awarded 133 contracts of which 44 were awarded to LBE's who were the LOW Bidder. Based on the LBE provisions, the award for 12 contracts would have gone to a contractor other than the LOW Bidder (9%). The total amount difference across those 12 contracts was \$90,556.00 (~ \$7,500/contract)

In 2008, DPW awarded 152 contracts of which 55 were awarded to LBE's who were the LOW Bidder. Based on the LBE provisions, the award for 25 contracts would have gone to a contractor other than the LOW Bidder (16%). The total amount difference across those 25 contracts was \$177,836.43 (~\$7,000/contract).

Honorable Michael Murphy, Chair  
Finance and Personnel Committee  
March 18, 2009  
Page 3

Review of the data suggests that 2008 saw slightly more contracts than average. Over the last 10 years we have averaged around 135 contracts per year. As noted based on the above 3 year's experience, the LBE can result in variable amounts with respect to dollars and the number of contracts that LBE's might get under the 5% rule. A reasonable estimate of fiscal impact for the purposes of this LBE provision of the ordinance would be around 12% of the contracts at about \$100,000 per year or again about 0.2% based on the annual average of \$50,000,000 in contract work.

In summary, we would not anticipate any measurable fiscal impact on DPW operations as it relates to the MORE Ordinance provisions associated with enhanced RPP participation or the inclusion of the provisions of this ordinance relative to Community Participation in Development projects. We would anticipate a brief period of increased effort during the initial surge of certifying new RPP candidates and in advising/training/assisting other departments in establishing monitoring procedures associated with the various provisions of this ordinance as related to their areas of supervision. We would anticipate some fiscal impact as it relates to the enhanced EBE participation requirements and as it relates to the creation of an LBE program. We believe the increase in EBE participation rates will result in approximately \$100,000 in increased contract costs or about 0.2% based on average annual contracts of approximately \$50,000,000. We believe that the creation of an LBE program will result in approximately \$100,000 in increased contracting costs or about 0.2% based on average annual contracts of approximately \$50,000,000.

I appreciate the opportunity to have been involved in the development of this MORE Ordinance and the opportunity to comment on its provisions as it relates to the operations of DPW. I trust the preceding information will be useful to you and the Council in your consideration of this matter. If there are any questions or you wish to further discuss any of the information provided, please do not hesitate to contact me.

Very truly yours,

Jeffrey J. Mantes  
Commissioner of Public Works

JJM:ph  
Attachments

c: Honorable Mayor Tom Barrett  
Members of the Common Council  
Patrick Curley  
Leslie Silletti  
Mark Nicolini  
Rhonda Kelsey  
Rocky Marcoux  
Ghassan Korban