

REPORT TO COUNCIL

September 2, 2016

Accept evaluation of the effectiveness on the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects (Report)

On September 5, 2012 Resolution No. 36954 directed the Portland Water Bureau to pilot the Community Benefits Agreement (CBA) in support of the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Both were alternative construction projects. City Council directed Procurement Services staff to work with Portland Water Bureau to evaluate the effectiveness of the CBAs for both projects in meeting the goals and objectives of the City and the principles set forth in the resolution and to report back to Council. This report includes that evaluation of the effectiveness the CBA had in meeting the principles set forth in the resolution.

On March 26, 2013 the City of Portland and stakeholders executed modified versions of the Model CBA for both the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Stakeholders included representatives from Hoffman Construction Company, State of Oregon certified disadvantaged, minority, women and emerging small business (DMWESB) subcontractors; unions; community based organizations serving minority, women, and low income people; and City employees. The stakeholders were challenged to develop and administer the two pilot CBAs. Because the CBA stakeholders and the agreements were identical and administered jointly, this evaluation addresses both construction projects.

The CBA model agreement is similar in many respects to Project Labor Agreements (PLAs) commonly used on the East Coast where there is a much higher incidence of labor strikes and unrest. This has not generally been experienced on the West Coast. In fact, there were no labor disputes encountered on either the Kelly Butte Reservoir or Interstate Maintenance Facility Renovation Projects (Projects) which needed to be addressed using the terms of the agreements.

In addition to the provisions common to PLAs, the model CBA also contained a number of provisions designed to increase workforce and subcontractor utilization. The evaluation of the CBA pilots in these respects revealed benefits and deficiencies for both Projects that are identified in detail in this report.

Both Projects met all CBA workforce and subcontractor utilization goals except for the aggressive goal set for female journey level participation. The market availability for journey women was identified as a constraint from the onset of the Projects. There were no issues with wage benefits or unskilled labor and neither of the projects encountered any problems with efficiency or productivity. Prevailing wage were paid on both projects.

The CBA did create a new mechanism to use for holding contractors, subcontractors and stakeholders accountable for goals and active compliance monitoring, beyond what the City has used in the past, but also had some major deficiencies which included:

- Although we found no conflict of interest, the Model and the modified versions of the CBA had the potential to create conflicts of interest.
- While pre-apprentices were being trained from the project budget, most of these individuals did not work on these precise projects. However, it is anticipated that these individuals will now be available to work on future bureau projects.
- There were indistinguishable improvements using the CBA compared to the City of Portland's existing MWESB subcontracting processes/goals that have been achieved on other alternative procurement projects that did not have a CBA.
- Very few of the workers and firms that received support and technical assistance from the project budget worked on the pilot projects.
- Administrative costs for the CBA were higher than comparable program administrative costs.

Lessons Learned and Recommendations

The pilot CBAs provided valuable information and lessons learned in moving the City of Portland forward in the development of a more robust instrument to employ for future City of Portland construction projects that use an alternative procurement method. The City recognizes the importance of institutionalizing a process, or citywide system that will help enable future alternative procurement construction projects achieve more aggressive social equity contracting goals.

The City is committed to taking the lessons learned and the benefits of the CBA and creating an updated MWESB Program and some form of Community Equity and Inclusion Plan (CEIP) that can be used for alternative construction methods that will enable projects to achieve higher subcontracting and workforce diversity goals.

What the City learned on the two pilot projects, with community input and considering the lessons learned from the pilot projects, will be used in development of CEIP and modification to the City's existing MWESB program going forward.

These Plans will ensure that the public served by the City receives the fullest benefit of the project undertaken by the City, and will ensure that the City does not directly or indirectly perpetuate the under-inclusion of racial and ethnic minorities and women in the construction industry and trades. The CEIP also assists the City in receiving the benefit of a highly skilled, well-trained and diverse workforce and contractor and subcontractor pool.

The CEIP also supports workforce diversity, and retention to Minority, Women, and Disadvantaged Business Enterprise firms and minority and women workers. Enhancements that can be made going forward include:

- With regard to measurable improvements to workforce and contracting diversity goals, the CEIP has a different structure to avoid placing our community partners in the situation where they may face an appearance of conflicts.
- The CEIP might have a compliance committee or the ECPC or a subcommittee to serve as the advisory body to help the City and contractors more fully achieve the workforce diversity and minority and women contracting goals on the project and the City as a whole.
- City would retain full authority and oversight on how the project specific dedicated fund account (1% Funds) is allocated to comply with the City's responsibility to retain responsibility for use of public funds and to avoid a situation that could give rise to real or perceived conflicts of interest. In addition, conflict of interest statements would be required of any compliance committee or ECPC and will be maintained in the City's Project files for record.
- CEIP provides the Construction Contractor the absolute right to select any qualified bidder for the award of contracts on the project provided that, such bidder is willing, ready, and able to comply with the CEIP for the project.
- Awarding of grants or contracts for the services used through the dedicated 1% Funds account will take place through a competitive application process, facilitated by the City, using the City's Procurement practices.
- A CEIP will be accomplished without the mandatory union employment, as plan, not a project labor agreement. This will avoid the divisive and legal complexity that the CBA created. The CEIP expects and encourages substantial but not exclusive union participation.
- Do not utilize the model draft CBA for future projects, but work collaboratively with City bureaus and community partners to create an updated plan that improves upon the model CBA, the modified CBA used on the Kelly Butte and Interstate Project without starting over.
- Apply the CEIP to all alternative procurement projects.
- Do not apply a CEIP to low bid projects. Continue using the City's existing MWESB programs for low bid projects.


- The pilot CBA goals were comparable to other city projects that met MWESB participation goals but did not have a CBA.
- The City needs to set clear roles and responsibilities that provide more training/support/structure/focus and ensure that there are no conflicts of interest for whatever committee reviews compliance in meeting the DMWESB goals.
- To avoid contractual complications and claims, move the committee to an advisory role outside of the City-Contractor relationship. Have the committee report to and advise the City and ECPC.
- Have the City continue providing contract compliance oversight of the contractor.
- In the review committee going forward, include labor unions, non-union contractors, members from various minority communities participate.

The CEIP will be another effective citywide tool to use for implementing a process that can be used where appropriate and can provide opportunity for alternative procurement construction projects to achieve aggressive equity inclusion and diversity goals. The CEIP allows for flexibility to work with the contractor on DMWESB requirements; creates inclusive, equitable and realistic targeted hiring goals that can be clearly communicated and measured; educates stakeholders and communicates the goals of the City's Equity Programs; and develops a strong system for contractor engagement and promoting Women and Minority Business Enterprise participation, and continues to encourage optional union participation.

While the CBA provided benefits to the projects, the deficiencies identified in this report also had negative impacts on both the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects. Those negative impacts are addressed further in the final report of the Community Benefits Agreement Pilot Evaluation, appendices and memorandum from City's Chief Administration Officer Fred Miller, attached to this report as Exhibits A, A1, and A2. The evaluation was performed by an independent consultant hired by the Office Management and Finance to assess the effectiveness of the pilot CBA's.

The CBA Labor Management Community Oversight Committee (LMCOC) also completed a report on the CBA pilot projects summarizing their outcome, CBA framework and processes, best practices and lessons learned. That report is attached as Exhibit B.

In addition, Exhibit C is a memorandum from the City's Chief Administrative Officer that summarizes the key findings from the OMF's CBA Pilot Evaluation Report and provides a policy framework on what should be considered for any future agreements or plans.


 Michael Stuhr, P.E.
 Administrator

TO THE COUNCIL:

The Commissioner of Public Works concurs with the above, and;

RECOMMENDS

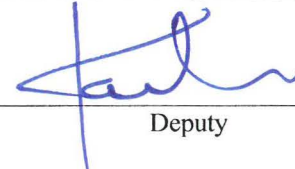
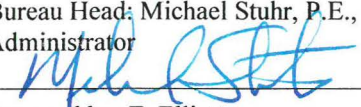
That the Council accept the evaluation, lessons learned and recommendations of the effectiveness on the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects.

Respectfully submitted,

Commissioner Nick Fish

Agenda No.
REPORT
Title

Accept evaluation of the effectiveness of the Community Benefits Agreement piloted on the Kelly Butte Reservoir and Interstate Maintenance Facility Renovation Projects (Report)

INTRODUCED BY Commissioner/Auditor: Commissioner Nick Fish	CLERK USE: DATE FILED SEP 13 2016
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	Mary Hull Caballero Auditor of the City of Portland By:  Deputy
BUREAU APPROVAL Bureau: Water Bureau Head: Michael Stuhr, P.E., Administrator  Prepared by: T. Elliott Date Prepared: September 2, 2016 Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, charter, Comp Plan Council Meeting Date September 21, 2016 22	ACTION TAKEN: SEP 22 2016 CONTINUED TO SEP 28 2016 2:45pm SEP 28 2016 RECEIVED

AGENDA
TIME CERTAIN <input checked="" type="checkbox"/> <i>3 out of 3</i> Start time: <u>9:45 a.m.</u> <i>2:00PM 90</i> Total amount of time needed: <u>45 minutes</u> (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Novick	4. Novick	
Hales	Hales	