

Equal Opportunity Review Commission

MINUTES

Wednesday, August 17, 2016

12:00 PM

City County Building

Sixth Floor City Stats Room 646

414 Grant Street, Pittsburgh, PA 15219

Commissioners in Attendance: Jessica Bellas, Ralph Bangs, Karen Hall, Freddie Croce, Barry Nathan, Tracey McCants Lewis, James Myers, Justin Laing

Absent Commissioners: Florence Rouzier, Erin Conley

Staff in Attendance: Emily Pontarelli, Ricardo Williams, Suzanne Gross, Josh Rolon, Oliver Beasley, Valerie McDonald Roberts

I. Introduction- Bellas

II. 90 Day Review- Reviews will be skipped since there is no new information

III. New

1. **1608-01**- PWSA- 2016 Catch Basin Replacement

George Robinson of PWSA said that the contract was awarded to Independent Enterprises Inc. which meets the City's MWBE goals. Bangs said that he had found that the contract the Commission was currently reviewing had been approved by the board two months ago. Robinson confirmed this. Bangs pointed out that the City code allows the Commission to review plans for proposed contracts and that if the Commission approves the proposed plan for MWBE participation then the agency can award the contract. Robinson said that there have been discussions between the legal departments of PWSA and the City on what code the Authority follows. Robinson said that he would like to see the rate payers win and that PWSA has been working towards this goal.

For the plan being reviewed, Robinson said that PWSA is waiting on signed commitment letters from Independent Enterprises Inc. Robinson said that PWSA been putting additional pressure on contractors to submit a complete packet and that is why PWSA has been delayed in coming before the Commission. Because of the high volume of contracts, contractors have had problems catching up. Robinson said that PWSA views that it is under state code and not city. Bangs said that the Commission is under the City code and should not be a rubber stamp to authorities that come late according to City code and that he will be voting against since the contract has already been approved and it would not be appropriate to review this type of request.

Laing said that if PWSA's attorney says that PWSA is not under city code then presenting to the Commission is a performance which is an insult to the problem the City

is trying to solve. Laing pointed out that if PWSA is not able to obtain documents necessary for contract approval, then PWSA is not in compliance of their own policy. Robinson said that he is not seeking a rubber stamp and understands Commission's comments and that the Authority is looking to get in line with the City with MWBE and procurement. Laing said that he understands that PWSA is trying to turn a large boat and make change. Nathan said that he agrees with both sides and that he is seeing a good faith effort in the changes that PWSA is trying to support and views the progress and objectives they have as a good faith effort. **Nathan motions to approve. (The motion was not seconded).** Bangs said that no motion was made and no other was needed. **PLAN NOT APPROVED.**

2. **1608-02- URA- Susquehanna Homes**

Valarie Waters of the URA explained that this project is a Homewood housing unit redevelopment as part of the community's redevelopment plan. Total project amount is about \$12 million, MWBE participation is at 47%, excluding preconstruction costs, and the URA contribution is \$950,000. Bangs said that the Commission only reviews plans for City contracts and this project has many different contracts including contracts between developers and private firms. Bangs suggested that the URA could submit a contract proposal or the Commission could review the project and recommend credit for the leveraged funds towards MWBE participation. Bangs said that this project should not be accounted or go through the Commission's formal approval process.

Waters pointed out that the project documentation shows the \$950,000 URA contract and that the MWBE participation exceeds that contract amount. Bangs said that the City only reviews MWBE participation against the contract for \$950,000. Waters said that she was instructed to present the project plans this way until next month. Bangs said that the commissioners are supposed to follow the City Code and the Commission is not allowed to review total projects, only proposed contracts. Waters said that the URA is trying to comply with EORC staff and commissioners despite receiving different information from both.

Bangs said that the EORC has approved policy last month where the City's Legal Department said that the Commission has the authority to set direction and provide oversight to these operations and that the EORC staff members are supposed to implement that Policy. Bangs said that the Commission has the decision making power according to the City code and Bangs asked that the URA listens to the Commission on what they can review.

McDonald Roberts said that Matt Stidle of the Law Department was present at the last Commission meeting and there are conversations on how to implement the Commission's Policy. McDonald Roberts said that Chief of Staff Kevin Acklin will be meeting with the Commissioners to talk about the policy and that the Commissioners are able to act as they would like for this meeting. McDonald Roberts also apologized for the confusion as the City is working on having everyone on the same page. Laing said that there is not confusion since there is a code or policy that the commissioners are following, Laing added the City wants to expand what the Commission can do according to City Code. Laing said that the Commission does not have "credit" to provide and that he disagrees with Nathan's earlier comment on his definition of good faith effort and that the confusion about the Commission comes from the expansion of their scope of work.

Bangs motions to withdraw this plan from the agenda since there is no contract to review. **(The motion was not seconded)**. Waters said that the URA would like to meet the participation goals, but the contract will be voted on soon by the URA board without Commission approval. Bangs asked for a breakdown of the URA contribution to the total project. Jessica Smith Perry, Assistant Director for Housing at the URA, explained that it is difficult to review the \$950,000 URA contribution since this is a small portion of the total project budget, usually 10% or less, and that the URA would like to have the entire project reflect the MWBE goals. Bangs said that he encourages the URA to have its own accounting system, but the Commission is limited by what they can review.

Laing pointed out that the URA has its own board that allows them to have their own policy and that there could be a specific policy for City contracts. Bellas suggested that the Commission could provide conditional approval upon submission of additional documentation to that outlines the use of the \$950,000 URA contract. Ben Kelly of One Oxford Development said that it would be difficult to breakdown the \$950,000 URA contribution since it is filling a funding gap and the accounting for the project was not set up to consider the specific allocation of the URA contribution. Bangs said he would be willing to approve the plan for the \$950,000 URA contribution if it did not specifically meet the MWBE participation goals if he knew that the funds go towards a total project had a strong MWBE participation.

Croce said that the MWBE participation are goals and that the Commission could look at the good faith efforts and other considerations such as the total project MWBE. Croce also said that the Commission could review the plan if it had the correct figures and asked if there was a fixed number. Waters said that the URA contribution is \$950,000. Laing asked if the accounting could be changed to reflect where the funds were allocated. Laing said that current process could be changed so that the budget would allocate the URA funds toward the MWBE participation. Laing said the Commission should keep its scope consistent to avoid confusion.

Waters said that the URA could select vendors R, Kohleman Development and Jordan Heating that would make \$950,000 75% MBE participation. Waters added that the URA could add an additional line just for the URA contract amount that would be connected to MWBE participation and the URA could send a revised budget to the Commission.

Laing motions to approve conditional on providing documentation that shows appropriation of City funds for MWBE participation. Hall seconds. In favor: Bangs, Nathan, Croce, Myers, Bellas, Laing, McCants Lewis, Hall. Against: None. Abstention: None. **MOTION PASSES, PLAN APPROVED WITH CONDITION.**

3. **1608-03-** HACP- Homewood North Window Replacement
Anthony Mannella said that the plan meets the City's goals for MWBE goals with sub-contractors that are certified in MBE and WBE. Bangs asked if Jarlar is supplying the window. Mannella said that Jarlar is a subcontractor. V.O. George is a supplier, but it is bringing in the windows. **Bangs motions to approve plan. Myers seconds.** In favor: Bangs, Nathan, Myers, Bellas, Laing, McCants Lewis, Hall. Against: None. Abstention: None. **MOTION PASSES, PLAN APPROVED.**
4. **1608-04-** HACP- Professional Environmental Services (Cosmos)

Mannella said Cosmos Technologies Inc , a certified MBE, is the sole vendor on the total \$100,000 contract. Bangs asked if there are any subcontracting. Cosmos will only be the only contractor. Laing asked about WBE participation. Mannella said that that this plan helps support an MBE, Cosmos, in self-performing all of the work.

Laing said that this does not satisfy the WBE goal despite Cosmos self-performing the work unless this is a minority-woman owned business as stated in the recently adopted EORC policy. Bangs said that the EORC policy states either you meet both MBE and WBE participation goals or you show a good effort for both. Bangs said he agreed with Laing that the Commission should expect MBE prime contractors to give an opportunity to WBE subcontractors. Hall said that she would like to see what efforts were made for WBE outreach.

Laing asked if Cosmos had reached out to any WBEs. Frederick Douglas, owner of Cosmos, said that his business is certified MBE and is committed to outreach and could look out further to find a WBE subcontractor, he knows the challenge and is fully committed to WBE participation. Laing agreed that there should be good faith effort on WBE. Mannella asked if the policy changed without the authorities knowing. Laing said that the code never reflected having MBE or WBE only. Mannella said that when he was part of the EORC staff that there was an effort to allow MWBEs to be self-performing. Laing said that this was Mannella's interpretation of the code. **Bangs motions to table the plan until next meeting** and encourages the contractor to reach out to WBEs. **Hall seconds**. In favor: Bangs, Myers, Laing, McCants Lewis, Hall. Against: Bellas. Abstention: Nathan. **MOTION PASSES, PLAN TABLED**.

Mannella asked for a letter addressed to Kim Detriek, Director of Procurement of HACP on why the plan was tabled.

5. **1608-05- HACP- Professional Environmental Services (PSI)**

Mannella said that the prime PSI meets the City goals for MWBE participation. **Laing motions to approve. Nathan seconds**. In favor: Bangs, Nathan, Myers, Bellas, Laing, McCants Lewis, Hall. Against: None. Abstention: None. **MOTION PASSES, PLAN APPROVED**.

6. **1608-06- HACP- Construction Management**

Williams said that the synopsis does not reflect any MWBE participation, but Emery Consulting and Emery Contracting where both are seeking certification for MBE and WBE. Mannella provided a letter to the Commission and explained that the Eastern Minority Supplier Development Council will be voting next month on the vendors for certification. **Bangs motions to approve. Nathan seconds**. In favor: Bangs, Nathan, Myers, Bellas, Laing, McCants Lewis, Hall. Against: None. Abstention: None. **MOTION PASSES, PLAN APPROVED**.

7. **1608-07- SEA- Gold Lot 1 A, North Shore**

Clarence Curry Diversity Coordinator for the SEA said that the project is to build a 1,000 car garage on the North Shore. There are seven contracts involved in this project that has been reviewed by SEA board at three public meetings. The first meeting was to place Massaro as the Construction Manager, where an evaluation committee looked at Construction Manager (CM) fee, WMBE participation and employment, and experience

and joined with Massaro. The SEA worked with Massaro to issue 7 trade packages a three different times. The first package was for the precast structure and the second was for the foundation. The last five packages were publically bid at one time. All of the bid sequences were subject to public budget rules with lowest responsible public bidder. SEA has been able to improve participation from 8% MBE and 2% WBE from previous conversations with EORC last month to 12.3% MBE and 4.4% WBE. Curry added that there is a formal labor plan that outlines 20% minority labor and 6% woman labor.

Laing asked if there is a reason why the Commission should treat the projects already approved by the SEA board differently from PWSA's executed contracts. Curry said that in the past, the SEA approved a Contract Manager contract and the Contract Manager in turn creates a plan for MWBE participation and presents to the Commission; Curry said that this was not the process for this project.

Josh Wells Project Executive of Mossaro said that they were limited in seeking approval for the initial overall contract since the design had not yet been created. Laing followed up with a question on the distinction between the first two of seven contracts that have already been approved. Curry said that the first two contracts were probably not brought to the Commission because they did not have very good MWBE participation, particularly the precast concrete contract.

Laing said it seemed like the Commission should only review the five contracts that have not been board approved. Curry asked what happens to the contracts that are not approved. Laing said that work would most likely continue on the project without Commission approval since it appeared that the previous contracts were only considered by the SEA's internal definition of good faith efforts and not of the Commission's. Laing asked to clarify that if the Commission does not review the first two contracts that the construction would not be held. Bangs said that the contracts cannot be awarded unless the Commission approves MWBE plans. Curry said that there are ongoing issues similar to PWSA's concerns that there are conflicts with what the SEA and Stadium Authority charter says that need to be resolved

Bangs said that there is a possibility for the SEA to improve upon their project participation if the Commission finds potential improvements in their outreach. Laing said that it will save time and preserve the scope of the Commission if they only consider the proposed contract plans. Curry said that he would ask Louis Lannutti to talk about outreach as a demonstration of good faith and the Commission could decide which contract plans they would review from that.

Louis Lannutti of CM Solutions and provides outreach services and provide support for minority businesses to help them land contracts as well as help woman and minorities learn trades. Lannutti said that there was outreach to the businesses that are part of PAUCP and businesses that are not certified. His team had reached out to PAUCP businesses and was unable to find one able to find one that created precast concrete, but they were able to find an MBE trucking company to deliver the precast concrete. Lannutti said that the contracts were separated into smaller packages to provide more opportunities for MWBEs to bid and they attempted to remove barriers for MWBEs.

Lannutti said that Mossaro and his team held events to bring together MWBE firms as well as majority contractors to see if there were ways for them to collaborate with each other on contracts. Lannutti said that CM Solutions is also monitoring vendors to find the number of minority workforce on a daily basis. Curry added that there were bids from MBE and WBEs for contracts, but none provided the lowest bid.

Bangs said that outreach looked extensive and asked what the numbers for the five proposed contracts were. Wells referenced a chart submitted to the Commission which outlined those figures. Bangs said that the MBE goals were not met on any of the five proposed contracts despite the outreach and asked why this was the case. Wells said that there was more participation within the general trade package, though participation has increased. Lannutti said that with this project many MWBEs focus on interiors and this was more difficult to bid on. Bellas asked why there weren't more contractors on landscaping. Lannutti said that his team had reached out to all of the PAUCP certified businesses and many did not bid despite attending meeting as demonstrated in sign in sheets.

Laing said that this looked like good faith effort. Lannutti said that this project required labor agreements and that the union works needed to be hired, but many MWBE may not have labor that is part of the union. Laing asked if the size of the project shows the limitation of minority participation. Lannutti said that he believed that \$4 million for MBE is good, but that there is a limit in the available contractors. Bangs asked if there was any effort on bringing in more minority union workers. Wells said Mossaro is committed to union labor.

Mr. Scott of WJ Scott, a minority contractor on this project, said that his MBE will be working on foundation and site work, but the issue is that there is not enough minority workforce to support projects. Scott also said that it is difficult to rely on the union workers that are "still in the hall" or not employed by a construction company for his business. Lannutti said that unions are for unions and they would like all projects to be only union agreement projects to exclude companies that don't utilize union workforce. Bellas said that this was off topic and the Commission should focus on good faith. **Laing motions to approve. Hall seconds.** In favor: Bangs, Nathan, Myers, Laing, McCants Lewis, Hall. Against: None. Abstention: Bellas. **MOTION PASSES, PLAN APPROVED.**

IV. Re-Submittals

1. 1604-06- PWSA 2016 Urgent Sewer Repair (Independent Enterprises)

Robinson explained that the plan demonstrates 18% MBE and 7% WBE participation and documentation has been presented to the Commission. **Bangs motions to approve. Bellas seconds.** In favor: Bangs, Nathan, Croce, Myers, Bellas, Laing, McCants Lewis, Hall. Against: None. Abstention: None. **MOTION PASSES, PLAN APPROVED.**

Robinson asked what to do with plans coming to the Commission where the PWSA board has already approved these projects. Croce said that the PWSA process is independent of the Commission. Bangs said that there should be enough time to present PWSA projects to the Commission before going before the PWSA board. Williams asked Robinson to explain the process that PWSA approves contracts. Robinson said that it is a 6 month to year planning which is submitted to an on-call design firm are reviewed and based on the

submission and nature of contract there may be a 15 day or 60 day contract review window. Bangs said that could be addressed through new policy that allows emergency vote by the Commission. Laing brought up that this new process is opening a window to allow multiple City agencies to use this emergency voting as the norm. Bangs said that PWSA would need to prove that the contract needs to approve in a timely manner.

Laing asked the City and PWSA to straighten out who PWSA is under to determine if the authority even needs to come before the Commission. Robinson said that PWSA did not come before the Commission and they want to tell the community that they are trying to contract from minority and woman owned businesses. Robinson suggests to provide input to proposed policy for PWSA. Laing commends PWSA work, but that the authority should be looking for other ways to promote PWSA's commitment to MWBEs.

V. Committee Report Updates

Policy Committee- Bangs said that the policy has been approved by the Commission, but not been distributed by EORC staff. McDonald Roberts said that Kevin Acklin is looking to have a meeting with the Commission to discuss the policy. McDonald Roberts said that the initial plan was to meet at noon, but given the number of people waiting to present to the Commission, City staff decided to hold the meeting with Acklin at the end of the EORC meeting. Bellas suggested going down immediately to Acklin's office for fifteen minutes. Commissioners decide to speak with Kevin Acklin.

VI. Adjournment- Bellas