

COMMUNITY BENEFIT PROGRAM

The following white paper outlines the City’s Community Benefit Program, its origin, the evolution of the program, lessons learned, and suggested changes moving forward. The objective of the Community Benefit Program is to create a tangible sustainable community impact after the project is complete by capitalizing on the significant upswing in development in the City.

HOW THE COMMUNITY BENEFIT PROGRAM BEGAN

The City of Hallandale Beach began the implementation of a Community Benefit Program (CBP) in 2011 with the Foster Park Community Center Project. That project was used as a pilot to assess the effectiveness of such a program. The analysis of the project concluded that CBP was feasible in a City of our size. The Foster Park Community Center also provided great experience on ways to modify the program for future projects.¹

On May 15, 2013, the City codified the Community Benefit Program under Section 23-3 of the City’s Code of Ordinance by setting forth the definition of what a Community Benefit Plan is:

Sec. 23-3. - Definitions.

* * *

Community benefit plan means a plan that may be required for capital construction projects if it meets the feasibility threshold as established by policy. When a solicitation requires it proposers must demonstrate and provide a proposed community benefit plan which has identifiable and observable community benefits for the community surrounding the project and the city. The benefits should include the approach for ensuring that both prime and subcontractors utilize local residents in every phase of the project of the city, community outreach, mentoring, training, apprenticeships, or any other types of identifiable ancillary benefits for the community. The city manager may only waive this requirement if the highly technical nature of the work makes the community benefit component unfeasible.

¹ It should be noted that pursuant to state statute section 255.0991, the state has preempted any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. The bill does not prohibit the application of a local preference in a competitive solicitation for construction services in which less than 50 percent of the cost will be paid from state-appropriated funds.

* * *

During the adoption of the ordinance, the City Commission established the feasibility threshold to determine when a Community Benefit Plan is required for certain projects and when it is optional. The threshold established requires the inclusion of a CBP for all Capital Improvement Projects over \$1 Million. CBPs are encouraged for all non-Capital Projects, as well as Capital Improvements Projects less than \$1 Million. As required under the ordinance, the policy implementing the Community Benefit Program (CBP) has been adopted within the Procurement Departments Standard Operating Procedure (attached Exhibit 2).

Currently the program operates as follows:

Within all Request for Proposals, the City requires all responses to include a percentage commitment toward CBP benefits. The CBP commitment must be an overall percentage (%) of the project cost (contract cost). This percent commitment creates a fair and equitable objective evaluation of the proposed CBP in the evaluation process. The points assessed by the percent commitment is calculated as follows:

Request for Proposals

CBP is required when the solicitation is \$1 Million or greater:

100%-50% = 25 points
49%-20% = 20 points
19%-5% = 15 points
4%-0% = 0 points

CBP receives bonus points when solicitation is less than \$ 1 Million:

100%-50% = 15 points
49%-20% = 10 points
19%-5% = 2.5 points
4%-0% = 0 points

The following provides an example of how the above is applied:

The City releases a RFP for a project whose **contract value** is estimated to be over \$1 Million. Contractor A submits a response proposal and meets the minimum qualifications set forth in the RFP. Within Contactor A’s proposal, that firm commits to ensuring that

their Community Benefit Plan will equate to at least 25% of the Project Cost. Contractor A will receive 20 points under that evaluation criterion (since CBP commitment is between 49% and 20%). Each member of the evaluation committee will award 20 points for Contractor A under the Community Benefit Plan evaluation criteria.

The same calculation applies for project under \$1 Million; however, in a project with an estimated contract value less than \$1 Million, Contractor A would receive 10 points (since CBP commitment is between 49% and 20%). Those points are awarded as bonus points above the 100 possible points.

Invitation to Bid

Unlike a RFP where the proposals are evaluated and receive points based on rating criteria, an Invitation to Bid (ITB) requires the City award the bid to the lowest responsive responsible bidder. As a result, under the recent Fire Station Invitation to Bid (estimated contract value is over \$1 Million), the City Commission established the Community Benefit Plan as a **minimum qualification** to be eligible for the consideration of the low bid response. The percentage established on that bid was a minimum of 20% CBP commitment. Therefore, the submitting proposals were required to commit to a minimum of a 20% CBP in order to be eligible for consideration of the bid.

LESSONS LEARNED

LBE not SBE: The past several projects have morphed from focusing on Small Business Enterprise to Local Business Enterprise. Through the codification and clear definition of what is considered “Local”, this has led to clarification of the City’s intent of the CBP; however, staff continues to work with and reinforce the City’s intention of the program to firms submitting proposals. The clarification of LBE is relevant because SBE businesses can be located anywhere. Since the objective of CBP is to create tangible sustainable community impact after the project is complete, utilization of local business will ensure city dollars spent on city projects are reinvested in the City.

Definition of Local Vendor: The Code of Ordinances defines local in two ways: (1) Homesteaded in the City and/or (2) Business Tax Receipt in the City for a year or greater. Although there is no recommendation to change the definition of local, the below changes suggest modifying the method in which the value of CBP is calculated. It should be noted that the program does not give preference to awarding bids to a local business. Rather, award to a local vendor requires the local vendors to be the lowest responsive responsible bidder.

Monitoring of the CBP: To ensure compliance with the CBP, enforcement and monitoring mechanisms must be incorporated into the program. Prior to the creation of the Hallandale Opportunity Project (HOP) there was no formal mechanism in place for the monitoring of the CBP. Since the hiring of the HOP Administrator, Contractors and Developers, are in direct communication with the HOP Administrator in regards to their reporting, monitoring and needs of the projects related to CBP. This has been instrumental in ensuring CBPs are tracked and monitoring the program overall.

Contractual Penalties & Participation beyond the General Contractor: Contractually, the General Contractor or Developer, is required to meet their CBP commitment. However, the Contractor and/or Developer cannot meet the commitment without the entire projects involvement. Therefore, it is the Contractor and/or Developer who needs to require all the subcontractors working on the project to participate. This is a change in culture from traditional construction practices which allow for self-performing much of the work or established relationships with multiple subcontractors who bid on the project. Requiring contractual language beyond the Developer and Contractor to the subcontractors, will create participation beyond the Contractor.

Economies of Scale: Economies of scale occur when increased output leads to lower average costs. Therefore, firms with relatively low output will find it difficult to compete because their average costs will be higher than the incumbent firms benefiting from economies of scale. Many of the smaller, local firms, do not have the buying or bonding threshold of larger non-local firms. As a result, the smaller local businesses are often higher in their bid response due to economies of scale.

SUGESSETED CHANGES

HOP staff has been monitoring the implementation of the Community Benefit Plan and its impact over the past few projects. Based on implementation and observations, staff is recommending several changes to the administration of the program. They are as follows:

1. Definition of Local Vendor to include tiered percentage dollar value calculation
2. Contractual Language Requirement for Contractor and all subcontractors and penalty provision
3. Definition of Local Workforce
4. Definition of CBP Calculation

In addition, staff would like to direction on incentivizing a prevailing wage for City construction contracts and Development Agreements.

1. DEFINITION OF LOCAL VENDOR TO INCLUDE TIERED PERCENTAGE CALCULATION

Currently, the percent CBP commitment is calculated based on the actual and/or in-kind dollars spent toward the project. For example, for the O.B. Johnson Park project, the contractor has committed to provide the following:

- 50% Local Vendor Utilization (local subcontractors and vendors)
- 33% Local Workforce (Hallandale Beach resident working on the project)

As provided in the Code of Ordinance, in order to be considered local a subcontractor/vendor must fall into one of the three tier categories:

- Tier 1: Homestead Resident and Hallandale Beach Business Tax Receipt greater than 1 year
- Tier 2: Hallandale Beach Business Tax Receipt greater than 1 year
- Tier 3: Homestead Resident

It is staff's understanding that the Commission's intention at the adoption of the ordinance was to provide those who meet Tier 1 criteria the greatest advantage to be afforded the opportunity to receive business through the CBP. However, as being applied, all three tiers receive the same equal benefit toward the Contractor's CBP percent requirement. Table 1 below provides an example of the current calculation using of CBP:

Table 1: Current CBP Local Vendor Calculation

| | Tier 1 | Tier 2 | Tier 3 | Non-Tier |
|---|----------------------|------------------------|----------------------|------------------------|
| General Condition (GC) | | \$ 3,206,135.40 | | |
| General Contractor | | \$ 535,521.80 | | |
| Electric | | | | \$ 246,580.00 |
| Earthwork | | | | \$ 432,982.75 |
| Demolition | | \$ 1,853,224.45 | | |
| Landscape | | | | \$ 311,761.86 |
| Fencing | | | | \$ 73,485.00 |
| Low Voltage | | | \$ 321,300.84 | \$ 343,699.16 |
| Field House | | \$ 278,971.00 | | |
| Paving | | | | \$ 17,264.00 |
| Striping | | | | \$ 7,896.50 |
| Concrete | | | | \$ 233,112.50 |
| Vertical Construction | \$ 60,000.00 | | | \$ 4,839,238.00 |
| CBP | \$ 400,000.00 | | | |
| Total | \$ 460,000.00 | \$ 5,873,852.65 | \$ 321,300.84 | \$ 6,506,019.77 |
| Total all Tiers \$ 13,161,173.26 | | | | |
| | | | Total CBP | \$ 6,655,153.49 |
| | | | CBP % | 50.57% |

In the above case study, you will note that 3.54% is being dedicated to a contractor who meets the Tier 1 Local Vendor designation versus 44.63% for Tier 2 Local Vendor designation and 2.4% for Tier 3 which weakens the intent of the tiered system. The intent of the tiered system was to provide a greater benefit to Tier 1 (those individuals who both live and work in the city, followed by those businesses who are located in the City, followed by individuals who reside in the City). The recommended changes seek to address that disparity.

The above current calculation does not provide any benefit to those who are both homesteaded and own a business within the City. Therefore, the proposed change creates a tiered dollar value calculation as follows:

- Tier 1: 100% dollar value
- Tier 2: 75% dollar value
- Tier 3: 50% dollar value

Utilizing the same scenario in Table 1 above, Table 2 provides the calculation based on the tiered % deduction:

Table 2: Tiered CBP Percent Calculation

| OB Johnson Park Project | | | | | | | |
|----------------------------|-------------------------|------------------------|----------------------|------------------------|------------------------|--------------------------|------------------------|
| Local Vendor Participation | | | | | | | |
| Non-Tiered CBP | | | | | Tiered CBP (100/75/50) | | |
| | Tier 1 | Tier 2 | Tier 3 | Non-Tier | \$ amt of % | % allocation | Tier |
| General Condition (GC) | | \$ 3,206,135.40 | | | \$ 2,404,601.55 | 75% | Tier 2 |
| General Contractor | | \$ 535,521.80 | | | \$ 401,641.35 | 75% | Tier 2 |
| Electric | | | | \$ 246,580.00 | \$ - | 0% | Non Local |
| Earthwork | | | | \$ 432,982.75 | \$ - | 0% | Non Local |
| Demolition | | \$ 1,853,224.45 | | | \$ 1,389,918.34 | 75% | Tier 2 |
| Landscape | | | | \$ 311,761.86 | \$ - | 0% | Non Local |
| Fencing | | | | \$ 73,485.00 | \$ - | 0% | Non Local |
| Low Voltage | | | \$ 321,300.84 | \$ 343,699.16 | \$ 160,650.42 | 50% | Tier 3 *Partial |
| Field House | | \$ 278,971.00 | | | \$ 139,485.50 | 75% | Tier 2 |
| Paving | | | | \$ 17,264.00 | \$ - | 0% | NonLocal |
| Striping | | | | \$ 7,896.50 | \$ - | 0% | Non Local |
| Concrete | | | | \$ 233,112.50 | \$ - | 0% | Non Local |
| Vertical Construction | \$ 60,000.00 | | | \$ 4,839,238.00 | \$ 60,000.00 | 100% | Tier 1 * Partial |
| CBP | \$ 400,000.00 | | | | \$ 400,000.00 | 100% | Tier 1 |
| Total | \$ 460,000.00 | \$ 5,873,852.65 | \$ 321,300.84 | \$ 6,506,019.77 | \$ - | 0% | |
| Total all Tiers | \$ 13,161,173.26 | | | | \$ 4,956,297.16 | | |
| | | | Total CBP | \$ 6,655,153.49 | | Total CBP Tiered | \$ 4,956,297.16 |
| | | | CBP % | 50.57% | | CBP % of Contract | 37.66% |

Without the tiered calculation, there is no benefit to being both a homesteaded resident and a business owner in the city. Therefore, the above change is recommended for projects in which local vendors will be utilized. This change is more true to the intent of the ordinance and provides a weighted benefit in line with the established tiers.

2. CONTRACTUAL LANGUAGE REQUIREMENT FOR CONTRACTOR AND ALL SUBCONTRACTORS

Illustration A:

There are several organizational tiers involved in construction projects. The City contractually requires the contracting entity, whether the Developer or Construction Manager, to provide a CBP commitment. However, it is rare nor the intention of the program to fulfill the entire CBP commitment through that one contracting entity. Therefore, all the tiers (see Illustration A) must participate in the commitment for success of the project and to achieve the CBP’s overall goal to create a “sustainable tangible impact to the Community after the project is complete.”

The definition of CBP with the Code of Ordinance includes the language which reinforces this concept of not only the participation of the contractor but the subcontractor as well:

The benefits should include the approach for ensuring that both prime and subcontractors utilize local residents in every phase of the project of the city, community outreach, mentoring, training, apprenticeships, or any other types of identifiable ancillary benefits for the community.

As a result, staff is recommending to include the following language in those contracts with the City which will in turn require the same language in any contract entered into by the Construction Manager and/or Developer:

[Insert Contractor name] requires that all subcontractors commit to supporting the City of Hallandale Beach Community Benefit Program. Subcontractors will be required to commit TBD% of their total contract value to hiring local Hallandale Beach vendors and residents. A list of local vendors and residents that your firm intends to hire MUST be submitted with your company’s bid documents by completing Exhibit XX.



The following information MUST be included in Exhibit XX and submitted with the bid package:

- *Local Vendors: company name, address, phone, contact, copy of business tax license, scope of work and value.*
- *Local Residents: resident name, address, phone, copy of driver's license, scope of work, pay rate, projected hours assigned to project.*
- *Acknowledgment: an authorized company official must sign and have notarized Exhibit XX to acknowledge that you understand and commit to the requirements of the described Community Benefit Plan.*

Penalties for City Contracts: Staff is working with the City Attorney's Office to draft language to place in City contracts which will require the contractor to forfeit a percentage of the remaining retainage equivalent to the percent/value of CBP not achieved. For example, if Contractor A's contract requires 25% (the equivalent of \$2 Million) be dedicated to CBP. Upon substantial completion of the project, Contractor A has only calculated \$1.8 Million of the \$2 Million, the difference would be deducted from the retainage amount owed to Contractor A. However, this methodology only applies to construction contracts in which there exists a retainage. Staff is working with the city Attorney's Office to draft language to be places in contracts with no retainage.

Penalties for Developer Agreements: Developer Agreements (DA) contain language which requires a certain percent commitment CBP (DA is approved during the major development approval process). In addition, the following changes to Das are suggested as it relates to CBP:

Prior to Issuance of Building Permit: Within the most recent Development Agreements, language exists requiring the Developer to submit a CBP prior to the issuance of the Building Permit. The CBP should outline how the Developer will plans on meeting their CBP commitment. The building permit will not be issued until such time as the CBP is approved by the City Manager.

Penalty for not achieving CBP commitment: Current negotiated language provides for a contribution to the HOP in the event of the failure to meet the CBP commitment. In the event that the Developer has not met its CBP commitment,

then the Developer shall pay to the City or CRA a portion of the City's cost of the HOP Program in an amount equal to (x) the difference, expressed as a percentage, between the twenty five percent (25%) and the actual local workforce hiring percentage achieved by the Developer, multiplied by (y) the City's estimated total cost of the HOP Program in the amount of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00). By way of example, if the Developer only achieves a local hiring percentage of twenty percent (20%), then the Developer shall pay the CRA five percent (5 [25 minus 20]%) of Three Hundred Fifty Thousand and 00/100 Dollars (\$350,000.00), or Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00).

However, this provision provides the Developer with a nominal penalty in comparison to the actual dollar value of CBP required. Therefore, staff is proposing that the Developer be required to pay that percentage of the equivalent to the percent/value of CBP not achieved (the same calculation as the penalty in City contracts proposed above). Developer would have the option to request a waiver of this penalty by demonstrating that they made their best efforts to identify qualified City of Hallandale Beach contractors or businesses that are licensed, meet the terms and conditions required by any contractor, subcontractor, materialman or laborer and can be bonded and provide pricing that is competitive to bids received. Developer would submit the request to the City Manager with appeal to the City Commission. Funds received through this process would be deposited into the HOP to be used toward job trainings.

Failure to fulfill the above or seek a waiver may result in the non-issuance of the project's Temporary Certificate of Occupancy.

3. DEFINITION OF LOCAL WORKFORCE

Currently CBP commitment in construction agreements is comprised of local vendor/subcontractor utilization and local workforce utilization. The difference between the two is vendors/subcontractors need to fall within the definition of local as defined in the Code of Ordinances. Local Workforce is currently defined in practice as the "boots on the ground" at the site on a daily basis. Local in workforce is additionally defined as a resident of the City. Resident in this capacity means a renter or homesteaded property owner.

The following is how local workforce shall be defined in order to satisfy the committed local workforce utilization.

Local Workforce shall be defined as any worker that is directly working on the project, either during construction or in operations after construction, who resides within the City as a renter or homesteaded property owner. Those classified as local workforce shall be provided with not only work directly on the project, but also provided the opportunity to generate a tangible sustainable impact after the project is complete. This may include, but not be limited to, participation in an apprentice program, mentorship program, training, long term employments beyond the term of the project, etc.

4. DEFINITION OF CBP CALCULATION

The CBP commitment is an overall percentage (%) of the project cost. The total percent CBP commitment with the RFP is contractually placed within the approved contract. The calculation of that percent commitment has not been defined and it's being calculated on a project by project basis. Using the example of Table 1 above. The contractor committed to 50% CBP in their request for proposal submission. The contractor's CBP commitment in the contract is as follows:

- 50% local vendor/subcontractor utilization
- 33% local workforce utilization
- Other

Therefore, when determining if the contractor met their 50% CBP, as committed in the RFP, that percent calculation would be the financial sum of the components above.

PREVAILING WAGE

In this highly mobile industry, where paychecks depend on the weather and workers are employed only for the length of a construction contract, industry and community have developed tools designed to ensure safety and quality of work and to induce positive economic impacts from major construction projects. One such tool is prevailing wage on public construction projects.

Beginning in 1931 the federal government has required a prevailing wage in federal contracts to protect communities and workers from the economic disruption caused by competition arising from non-local contractors coming into an area and obtaining federal construction contracts by underbidding local wage levels. Today, this requirement, known as the Davis-Bacon Act, applies to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction related public works projects. Through Davis-Bacon, contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

Staff is recommending the Commission provide direction on the inclusion of a prevailing wage requirement in public and private construction projects. **It is important to note that although it is difficult to capture the fiscal impact of the prevailing wage requirement, studies have shown an increase in the costs of construction projects with such requirement.**

One methodology to implementing prevailing wage in such projects would be to incentivize it as bonus points in the RFP process for public construction and offering Developer Incentives in private construction projects. An example of such an incentive would be to offer the City's concierge service at no extra charge to Developers in exchange for requiring a prevailing wage on their project.

SUMMARY CONCLUSION

Based on the above, the following summarizes the recommended changes to the Community Benefit Program:

1. Modify the percent calculation for the local vendor/subcontractor calculation to include a tiered percentage dollar value calculation
2. Include contractual language between the City and Developers or Construction Managers, language requiring identical language in all subcontracts related to the project
3. Set a specific definition of Local Workforce and the intention of the utilization of local workforce.
4. Clearly define how to calculate the percent commitment of CBP.
5. Provide direction on Prevailing Wage for local workforce in public and private construction projects who are employed directly on the site of work.