



ORDINANCE No. 2009-280

**Final Settlement
of
KOSSMAN vs CITY OF HOUSTON**

City of Houston, Texas Ordinance No. 2009-280

AN ORDINANCE APPROVING AND AUTHORIZING A SETTLEMENT AGREEMENT BETWEEN THE CITY OF HOUSTON AND KOSSMAN CONTRACTING COMPANY, INC. (CIVIL ACTION NO. H-96-3100); ESTABLISHING ANNUAL GOALS RELATING TO CONSTRUCTION CONTRACTS LET BY THE CITY, INCLUDING ANNUAL GOALS FOR SPECIFIC CATEGORIES OF CONSTRUCTION CONTRACTS; AMENDING CHAPTER 15, CODE OF ORDINANCES, HOUSTON, TEXAS, TO CONFORM TO THE SETTLEMENT AGREEMENT; CONTAINING A REPEALER; ~~CONTAINING A REPEALER~~; MAKING VARIOUS FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.

WHEREAS, the City's current minority and woman business enterprise ("MWBE") program, designed to ensure that the effects of past discrimination against minority and women owned businesses are mitigated, contains overall annual program goals previously established by Ordinance No. 2007-293, providing a process to open City contracting opportunities to such businesses; and

WHEREAS, the City's MWBE program was challenged by litigation instituted in federal court in 1996, which litigation was settled by agreement (the "Settlement Agreement") executed by the parties to such litigation in 2006; and

WHEREAS, as part of the Settlement Agreement, the City was obligated to conduct and receive a new disparity study by the end of calendar year 2006, which obligation was met by the delivery of the 2006 Disparity Study ("2006 Study") by the firm of Mason Tillman Associates, Ltd. on December 31, 2006; and

WHEREAS, the Settlement Agreement required the City to alter then-existing goals of the MWBE Program for construction contracts let by the City, excluding those construction contracts funded by the U. S. Department of Transportation/Federal Aviation Administration, based upon the findings of the 2006 Study, which agreement the City carried out by amending certain MWBE Program goals by the City Council's passage, on March 7, 2007, of Ordinance No. 2007-293; and

WHEREAS, the plaintiff in the above-referenced litigation petitioned the federal district court to re-open such litigation, contending that the City had breached the Settlement Agreement; and

WHEREAS, the City and the plaintiff in the litigation have agreed to settle all remaining issues arising out of the Settlement Agreement by an Agreement to Modify Settlement, presented to and approved by the federal court on December 16, 2008 (the "2008 Settlement"), which latter agreement requires the City (i) to amend the annual overall goal of the MWBE Program with respect to the program's overall annual goals for construction contracts let by the City (excluding those federally funded transportation contracts referenced in the second preceding recital above), (ii) to establish new, specific annual goals for certain categories of civil construction work let by the City, and (iii) to accelerate the time for a new disparity study to be conducted by the City with the input and participation of contractors and other interested groups and parties and to implement new goals for construction contracts let by the City based upon the new disparity study

WHEREAS, while the settlement agreement affects goal setting for women-owned construction contractors, the City is concerned that the important governmental objective of providing fair opportunities for women-owned construction contractors to participate in city construction contracting must be included in a new disparity study that includes both statistical and anecdotal analysis; and

WHEREAS, the City believes that it should re-implement goals for women-owned construction contractors if the new disparity study determines that such goals will be substantially related to the important governmental objective of providing fair opportunities for women-owed construction contractors to participate in city construction contracting; and

WHEREAS, the City believes that input of stakeholder groups, including specifically groups that advocate support for women-owned businesses, must occur in the disparity study process, starting with the selection of a consultant, to provide an open and fair process; **NOW, THEREFORE**,

* * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are adopted as part of this Ordinance.

Section 2. That the City Council hereby approves and authorizes a settlement agreement or other undertaking described in the title of this Ordinance, in substantially the form as shown in the documents which are attached hereto as Exhibit A and incorporated herein by this reference. The Mayor is hereby authorized to execute such document and all related documents on behalf of the City of Houston. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

Section 3. That the City Council does hereby establish (1) revised annual overall goals for the MWBE program relating to construction contracts and (2) specific goals for certain categories of construction contracts let by the City, excluding those construction contracts funded by the U. S. Department of Transportation/Federal Aviation Administration, as follows:

Annual Overall MWBE Program Construction Goals

Minority-Owned Business Enterprises 14%

Small Business Enterprises 8%

The annual goals set forth above shall apply only to the construction contracts covered by the program, as set forth in Section 15-83(a)(3) of the Code of Ordinances.

Civil Construction Goals
(Annual goals - by Category)

PROJECT DESCRIPTION	CIP NOS.	MBE GOAL (%)	SBE GOAL (%)
Thoroughfare and Storm Sewer Relief	N-0500 - N-0800	7	10
Neighborhood Street Reconstruction	N-300 - M	9	7
Sidewalks	N-0610	4	9
Overlays	N-1037	13	5
Lift Stations	R-0267	10	8
Treatment Plants	R-265 & R-0572	10	8
Line Work	R-2011	10	8
Water Line Replacements	S-0035	11	9
Large Water Line	S-0900	10	8
Water Tanks	S-0600 & S-610	8	3
Plant Work	S-0056 & S-0012	12	6
Rehab Work	-----	12	9

The annual goals set forth in the above table for each category of civil construction shall be deemed to encompass all contracts let by the City in the each of the respective

categories specified and shall be applicable only to contracts not yet advertised for bid on the effective date of this Ordinance; provided, however, specific contracts may be approved with a goal that varies from the prescribed annual goal in the table, as provided in the program.

Section 4. That the goals established herein, which are traditionally established by motion, are being established by ordinance in this instance for the purpose of complying with the terms of the Agreement to Modify Settlement, dated December 16, 2008. Future establishment or adjustment of such goals may be accomplished by Council motion rather than ordinance.

Section 5. That Chapter 15, Code of Ordinances, is hereby amended to conform to the terms of the settlement agreement, as follows:

1. By amending Articles V and VI to read as shown in Exhibit B to this Ordinance;
and
2. By repealing Article IX.

Section 6. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 7. The Mayor is hereby authorized to take all actions necessary to effectuate the City's intent and objectives in approving such agreement, agreements or other undertaking described in the title of this ordinance, in the event of changed circumstances.

Section 8. The City Attorney is hereby authorized to take all action necessary to enforce all legal obligations under said agreement without further authorization from Council.

Section 9. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 1st day of April, 2009.

APPROVED this 1st day of April, 2009.



Mayor of the City of Houston, Texas