



PLANNING AND BUDGET OFFICE
TRAVIS COUNTY, TEXAS

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December 13, 2013

To: Commissioners Court

From: Leslie Browder, County Executive, Planning and Budget
Cyd V. Grimes, Purchasing Agent

Re: Staff Comments on Citizens Task Force Recommendations on Travis County
Economic Development and County Construction Procurement Practices

On August 6, 2013, the Commissioners Court requested that staff provide comments regarding how to best implement recommendations made by the task force. The documents attached to this memorandum include a matrix of the pros and cons associated with each recommendation, as well as what tasks would need to be done at the staff level to implement the changes.

Background

On August 6, 2013, the Commissioners Court approved the following unanimous recommendations from the task force regarding construction to be undertaken by applicants for economic incentive agreements with Travis County and public works projects, if not already being done. The Commissioners Court directed staff to report on how the following recommendations could be implemented, and to include any issues, concerns, or alternatives in the report.

- Require OSHA safety training and inspections.
- Provide an additional tax incentive of ten percent above the base incentive if fifteen percent of construction workers are deemed economically disadvantaged.
- Provide an additional tax incentive of ten percent above the base incentive if ten percent of construction workers are veterans.
- Require companies applying for tax incentives to comply with the County HUB policy.
- Require subcontractors on County public works projects to disclose their safety records
- Give preference (during bid evaluation) to construction contractors that provide healthcare to their workers, so long as the bid is not more than five percent higher than the lowest bid from a contractor not providing such insurance.
- Allow construction workers to take wage complaints to the County and retain the right to audit contractor payroll documents, construction contracts and interview workers.
- Require companies receiving tax incentives to comply with the County's HUB policy, including monthly reporting.

On August 13, 2013, the Commissioners Court made the following decisions related to recommendations that a majority of the task force supported, but did not support unanimously.

- Require tax incentive applicants to obtain workers compensation insurance for construction workers who are hired by contractors to construct their proposed project.
- Rather than change the County's economic development incentives policy to restrict incentive projects to economically disadvantaged or underdeveloped areas, the County should retain the current project location requirements.
 - One of the current location requirements is the City of Austin's growth concept map, which emerged out of the City's comprehensive plan development process, and was formerly referred to as the desired development zone. The County's policy reflects this new language.
- Encourage a living wage of \$11 per hour for construction workers on County public works projects.

Task Force Recommendations – Economic Development

In order to implement the recommendations supported by the task force, the Commissioners Court could revise the Economic Development Incentives Policy as follows:

- Revise the policy to include an additional incentive of ten percent for the hiring of construction workers who are either economically disadvantaged or veterans.
 - This can be accomplished by adding these two categories as two additional eligibility criteria under the economically disadvantaged hiring/training criteria, which allows for an "above base incentive" of ten percent if criteria are met.
- Revise the policy to require incentive applicants to ensure OSHA safety training and inspections during construction of their facilities, as well as providing workers compensation coverage.
 - Staff recommends using language similar to the City of Austin's recent policy revisions approved by the City Council on October 24, 2013. This will facilitate monitoring and compliance when both the City and the County are participating in the same incentive project.
- Incorporate HUB/MBE/WBE requirements in the policy, including periodic reporting.
 - Currently, the County requires incentives applicants to comply with the City's MBE/WBE requirements on joint projects, which typically meet or exceed the County's HUB requirements.
 - In the event that an incentive project is approved that is solely between the County and an applicant, the County would incorporate its HUB policy requirements in the agreement.
 - Compliance procedures for incentive agreements are conducted annually, not monthly. Staff recommends continuing this practice.

The task force recommended a wage floor for incentive construction projects of \$11 per hour or the prevailing wage, whichever is higher. This was supported by seven of ten task force members. On October 24, 2013, the City Council approved the recommendations of the task force majority. City staff had recommended a different approach to the City Council that either prevailing wage or living wage, but not both, be paid to construction workers on incentive

projects. They reasoned that providing two options would allow companies an opportunity to ascertain the costs and benefits of implementing either option and then to draw their own conclusion about which to choose. Travis County policy already requires a wage floor for incentive construction projects equal to the County's minimum wage, which is currently \$11 per hour, but the current policy does not address prevailing wages. The Commissioners Court may wish to further discuss policies regarding wage requirements for construction workers on incentive projects. The City Council also approved a waiver process regarding minimum wage and benefits requirements if certain exceptional circumstances can be demonstrated. The Commissioners Court may currently consider waivers as deemed appropriate, and specific conditions for consideration are not defined in the policy.

Task Force Recommendations – County Public Works Projects

The Purchasing Office recommends the following:

- Require OSHA safety training and inspections.
 - County policy currently requires that all contractors and subcontractors designate an onsite safety representative who shall have successfully completed the OSHA 10 safety training. The General Conditions section in County construction project documents would have to be amended to include this requirement for all construction workers.
- Require subcontractors on County public works projects to disclose their safety records.
 - Recommend placing the responsibility on the Prime Contractor to gather, review and maintain the safety records of all Subcontractors. This can be accomplished by inserting language in the General Conditions of Construction Project documents stipulating the Prime's responsibility. The Prime would be responsible for reporting to the County any serious safety violations found on Subcontractor Safety Records. The same process used by the County to determine the Prime's eligibility to work on the project, based on safety record findings, could be used to determine the Subcontractor's eligibility as well.
- Do not give preference (during bid evaluation) to construction contractors that provide healthcare to their workers, even if the bid is not more than five percent higher than the lowest bid from a contractor not providing such insurance. This recommendation is based on advice from the County Attorney indicating there is some risk associated with implementation of this recommendation for low bid public works projects.
- No action is needed to allow construction workers to take wage complaints to the County or to retain the right to audit contractor payroll documents, construction contracts and interview workers. The Purchasing Office already has this process in place for public works projects, which could be procured under a public-private partnership arrangement or under more traditional delivery methods.
- Texas law does not permit Counties to require any wage other than wages set in accordance with Chapter 2258 of the Government Code, which would preclude requiring a living wage of \$11 per hour for construction workers on County public works projects.

cc: Mary Etta Gerhardt Tenley Aldredge Jessica Rio
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TRAVIS COUNTY

ECONOMIC DEVELOPMENT TASK FORCE MAJORITY RECOMMENDATIONS

PROS/CONS SUMMARY

	TASK FORCE RECOMMENDATION:	PRO(S)	CON(S)
1	<p>OSHA Safety Training and Inspection</p> <p>Unanimously approved by the Task Force.</p> <p>Travis County should require all construction workers to have OSHA-10 safety training and an OSHA certified safety inspector on construction jobs that receive any County funding or economic incentive.</p> <p><u>Planning and Budget Comments:</u> This requirement is supported by the County’s Risk Management Division. Applicants can be apprised of the County’s desire to incorporate this practice during initial discussions with the applicant. The County’s economic development incentives policy already states that an incentive applicant must meet “specified County requirements related to wages and safety conditions for employees hired by contractors for construction of the [applicant’s] facilities related to the incentive”.</p> <p>Recommended language that could be added to the County policy should be consistent with the language adopted by the City: “The Applicant will ensure that all construction workers hired for construction funded by the Applicant will be provided workers compensation insurance and OSHA 10 safety training.”</p> <p><u>Purchasing Office Comments:</u> County policy currently requires all contractors and subcontractors to designate an onsite safety representative who shall have successfully completed the OSHA 10-safety training. To add additional requirements that all workers receive this safety training could result in higher bids on County funded construction projects since the implementation cost to the contractor, as well as subcontractors at every tier, will likely be included in the bid price. Monitoring compliance with this expanded requirement may create the need for additional staffing in the Purchasing Office over time.</p>	<p>Safety training and inspections enhance worker safety on construction projects.</p> <p>The City of Austin has a similar requirement in place and management of their public works department has not noticed higher construction bids that could be directly attributed to safety training and inspections. See attached letter from the City of Austin public works director that expresses this opinion.</p> <p>This task force recommendation was approved by the City Council on October 24, 2013, as a minimum incentive project requirement. In future incentive agreements in partnership with the City, the County may be able to rely on compliance monitoring conducted by City staff.</p>	<p>Incentive agreements: Any changes to the County’s economic development policy that increase the level of monitoring and compliance may decrease the attractiveness of Austin/Travis County as a good location for new businesses, and will likely result in increased staff workload over time. Recently, the number of incentive projects has not significantly increased, but the Planning and Budget Office would need to utilize the expertise of the Purchasing Office for compliance in this area for “County only” projects. This might add to the workload of the Purchasing Office.</p> <p>County funded public works projects: See Purchasing Office comments.</p>

	TASK FORCE RECOMMENDATION:	PRO(S)	CON(S)
2	<p>Workers Compensation Coverage</p> <p>Majority of Task Force approved (7-3).</p> <p>Travis County should require that all construction workers to be covered by workers compensation, and the General Contractor should be responsible for compliance on construction jobs that receive any County funding or economic incentive.</p> <p><u>Majority Opinion:</u> Workers compensation insurance protects the County from large uncompensated care costs that result from injuries in a dangerous industry. It creates incentives for employers to ensure worksite safety because policyholders receive discounts when they invest in safety training programs and have fewer worksite accidents. While other types of occupational risk plans may exist, the majority of the task force holds that workers compensation is the most clear and consistent standard that provides adequate coverage of medical care and income benefits for injured workers.</p> <p><u>Minority Opinion:</u> Contractors should be given the opportunity to secure private insurance with greater benefits for severe injury.</p> <p><u>Planning and Budget Comments:</u> This requirement is supported by the County's Risk Management Division. Applicants can be apprised of the County's desire to incorporate this practice during initial discussions with the applicant. The County's economic development policy already states that an incentive applicant must meet "specified County requirements related to wages and safety conditions for employees hired by contractors for construction of the [applicant's] facilities related to the incentive".</p> <p>Recommended language that could be added to the County policy should be consistent with the language adopted by the City: "The Applicant will ensure that all construction workers hired for construction funded by the Applicant will be provided workers compensation insurance and OSHA 10 safety training."</p> <p><u>Purchasing Office Comments:</u> No action needed. Travis County already requires the described workers compensation coverage.</p>	<p>Establishing parity with County construction sites could be applied to incentive projects as a minimum standard. The only concern voiced in the minority opinion is that third party contractors should have the option of obtaining a higher level of coverage. This provision would not prohibit them from obtaining a higher level of coverage.</p> <p>This task force recommendation was approved by the City Council on October 24, 2013, as a minimum incentive project requirement. In future incentive agreements in partnership with the City, the County may be able to rely on compliance monitoring conducted by City staff.</p>	<p>Additional staff resources may be needed over time to provide a meaningful level of compliance monitoring if unable to rely on the results of the City's monitoring efforts. Additional resources are not anticipated in the near future unless a significant increase in incentive agreements begins to occur.</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
3,4	<p>Wage Requirements</p> <p>Majority of Task Force approved (7-3).</p> <p>Require that all construction workers should be paid at least the County's minimum wage (\$11.00/hour), as amended, or the prevailing wage, whichever is higher, on construction jobs that receive any County funding or economic incentive.</p> <p><u>Majority Opinion:</u> The County has already established that an \$11.00/hour wage is the minimum it should pay its own employees. When the \$11.00/hour rate was established, it was viewed as a "living wage" that allowed County employees to live above the poverty line. However, construction workers on County projects are not currently subject to that standard, and many workers may earn less than \$11/hour under current Travis County prevailing wage rates. A University of Missouri study indicates that there is no statistical difference in costs where prevailing wages were honored versus those that did not pay prevailing wages.</p> <p>The Majority recommended that the County review the current minimum wage standard as it has not been updated in years while the cost to live in Travis County has risen substantially.</p> <p><u>Minority Opinion:</u> None stated in report related to public works projects. Regarding incentive projects, there is insufficient data to justify paying prevailing wages. There was consensus among the group that a prevailing wage requirement would add at least 4% to the labor cost of a project.</p> <p><u>Planning and Budget Comments:</u> If a review of the current minimum County wage is conducted, it should include a comprehensive assessment of all employer-subsidized healthcare and retirement benefits, not simply a review of the minimum wage itself.</p> <p><u>Purchasing Office Comment:</u> No action needed. Statute mandates prevailing wage rates for County funded projects.</p>	<p>There are several categories of laborers, under the current adopted Department of Labor prevailing wage rate (in County funded construction contracts) that earn less than \$11.00 per hour (approx. \$7 to \$8 per hr.). The majority of the wages listed therein are in excess of \$11/ hour.</p> <p>City of Austin staff recommended that either prevailing wage or living wage, but not both, be paid to construction workers on incentive projects. Providing two options would allow companies an opportunity to ascertain costs and benefits of implementing either option and then to draw their own conclusion for which to choose. On October 24, 2013, the City Council approved a wage floor for incentive construction projects of \$11/hour or the prevailing wage, whichever is higher. The City Council also approved a waiver process if certain exceptional circumstances can be demonstrated.</p>	<p>Incentive agreements: Adding additional labor costs or compliance requirements to an incentive applicant's construction may result in fewer new projects and new jobs coming to the area. Establishing parity with County construction sites as a requirement for future incentive projects will likely require additional staff resources over time to provide a meaningful level of compliance monitoring.</p> <p>County funded public works projects: AG Opinion JC-0011 appears to prohibit the County from requiring any wage other than prevailing wages (determined in accordance with Ch. 2258, Gov't Code) on public works contracts. The living wage could be required for economic development contracts (because the project is not a "public work"), but not on any project where the County is a party to the contract and involving the expenditure of public funds. Certain task force members argued that Section 62.0515 (Tex. Labor Code) <i>may</i> render this AG opinion moot, but the opinion is not on the AG's list of overruled/modified opinions. The County is reluctant to advocate for this requirement on public works projects at this time.</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
5,6	<p>Job Training of Economically Disadvantaged Individuals and Veterans</p> <p>Unanimously approved by the Task Force.</p> <p>Incentive applicants should qualify for additional incentives above the base incentive if the applicant ensures and proves that 15 percent of construction worker hours completed on the project are completed by economically disadvantaged individuals (as defined by the County's Economic Development Incentives Policy).</p> <p>Incentive applicants should qualify for additional incentives above the base incentive if the applicant ensures and proves that 10 percent of construction worker hours completed on the project are completed by veterans living in the Austin area.</p> <p>Similar requirements should be in place for County public works projects of scale.</p> <p><u>Planning and Budget Office Comments:</u> This provision could be incorporated or combined as another alternative option within the existing "add-on" incentive provision, which currently allows an additional incentive of 10 percent provided certain conditions related to economically disadvantaged hiring/training are met.</p> <p><u>Purchasing Office Comments:</u> If allowed by procurement statute, an implementation program would need to be developed. Additionally, this could potentially result in additional cost to the County through acceptance of other than the lowest bid. Contract award could potentially be delayed while analyses of all bids are performed to determine compliance with this provision.</p>	<p>Promotes employment opportunities for economically disadvantaged individuals and veterans.</p> <p>Additional staff resources in the Planning and Budget Office are not anticipated in the near future for monitoring and compliance efforts unless a significant increase in incentive agreements begins to occur.</p>	<p>If implemented, monitoring compliance for County public works projects would require more staff time and will require additional resources (staff).</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
7	<p>HUB/MBE/WBE Programs</p> <p>Unanimously approved by the Task Force.</p> <p>Require incentive applicants to follow the guidelines of the County's HUB program.</p> <p><u>Planning and Budget Comments:</u> Requirements should be as consistent as possible between the City/County since these two parties frequently award incentives to the same applicant to help facilitate compliance monitoring.</p> <p>Currently, the County requires incentives applicants to comply with the City's MBE/WBE requirements on joint projects, which typically meet or exceed the County's HUB requirements. In the event that an incentive project is approved that is solely between the County and an applicant, the County could incorporate its HUB policy requirements in the agreement. These requirements can be formalized in the County's Economic Development Incentives Policy.</p> <p><u>Purchasing Office Comments:</u> No action needed since this recommendation is related to an incentive project. The Purchasing Office would be able to assist the Planning and Budget Office with compliance of HUB requirements if an incentive is approved that is solely between the County and an applicant.</p>	<p>This requirement is already occurring in practice, both at the City and the County. On October 24, 2013, the City Council approved the addition of this requirement to their economic development policy, simply to formalize the requirement.</p>	<p>There could be additional staffing needs over time if a significant increase in "County only" incentive agreements begins to occur. Currently, the County relies on the City's monitoring and compliance when both parties are participating in the same incentive project.</p>
8	<p>Safety Record Disclosure</p> <p>Unanimously approved by the Task Force.</p> <p>Current County purchasing policy requires that prime construction contractors disclose their safety records. Extend this requirement to subcontractors on County construction projects, including public-private partnership arrangements, if the budget exceeds \$1 million.</p> <p><u>Planning and Budget Office Comments:</u> None.</p> <p><u>Purchasing Office Comments:</u> Requiring subcontractors at every tier to submit safety records would impact the project schedule, as each safety record would have to be reviewed prior to contract award. In most instances, the prime contractor may not have contracts finalized with all proposed subcontractors at the bid submission deadline. The County would be forced to wait until subcontracts are executed before the safety records of the subcontractors could be submitted and reviewed.</p>	<p>This provision would provide the County with information on the safety records of all subcontractors on the job site.</p>	<p>Monitoring compliance of additional requirements for County public works projects will require additional resources. Contract award will be delayed while awaiting receipt of all safety records, and the time needed to review each record.</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
9	<p>Healthcare Preference</p> <p>Unanimously approved by the Task Force.</p> <p>Accept the best bid on County construction projects, including public-private partnership arrangements, if the prime contractor and subcontractors provide reasonable healthcare coverage for workers, as long as the bid is not more than 5 percent higher than the lowest bid from a contractor not providing such insurance. The task force report indicates that 76 percent of Austin area construction workers are not covered by health insurance.</p> <p><u>Planning and Budget Office Comments:</u> This recommendation is not related to an incentive project. The County's Economic Development Incentives Policy already requires applicants to offer group healthcare coverage or company contributions to health benefits that provide meaningful opportunity for workers to purchase coverage.</p> <p><u>Purchasing Office Comments:</u> An implementation program would need to be developed. This could potentially result in additional costs to the County through acceptance of other than the lowest bid. Contract award could potentially be delayed while detailed analyses of all bids are performed to determine compliance with this provision.</p>	<p>The task force report states that "fiscal benefits of an insured construction workforce should mitigate, if not eliminate, any increased cost to the County."</p>	<p>Monitoring compliance of additional contract requirements could require additional staffing in the Purchasing Office over time. Adoption of this requirement could potentially result in additional costs to the County through acceptance of other than the lowest bid.</p> <p>This recommendation carries some legal risk if included in low-bid procurements. At least one AG opinion (JM-1213, 1990) held that a city could not require bidders on a construction project to provide their employees with basic health insurance benefits because such a requirement had "no direct relation to the quality of [...] services" being solicited. In Texas, the AG held, "a governmental body... may not adopt policies or issue bid solicitations or specifications that restrict competition unless such policies, solicitations, or specifications have a definite and objective relationship to matters of quality and competence or adopted pursuant to clear legislative authority." No legal impediments or issues with including a "healthcare preference" in non-low-bid (i.e., alternative project delivery) solicitations (design-build, CMAR, job order contracts, etc.).</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
10	<p>Restrict Incentive Project Location to “Economically Disadvantaged” or Underdeveloped Areas while allowing for Local Expansion</p> <p>Majority of Task Force approved (6-1).</p> <p>Any local, state, or federal authority may define “Economically Disadvantaged” or underdeveloped areas. Incentive projects may be exempted from this provision if they involve a local expansion of an enterprise that currently employs at least 100 individuals at a workplace in Travis County.</p> <p><u>Majority Opinion:</u> Encouraging economic development in disadvantaged areas will give workers easier access to construction sites, will avoid construction in most environmentally sensitive areas of the County, and will stimulate economically depressed areas.</p> <p><u>Minority Opinion:</u> None stated in report.</p> <p>The Commissioners Court voted not to make this proposed change to the existing economic development incentives policy. The existing policy already provides the flexibility to consider underdeveloped areas and encourage local expansions. No further action required.</p>	<p>The County’s current economic development policy already provides sufficient flexibility to achieve local expansion, or to consider applicants wishing to locate/expand in underdeveloped areas.</p>	<p>To limit incentives to companies that conduct business in economically distressed zones may result in losing companies who employ lower income groups within the overall community although the new facility is not to be located in a distressed area.</p>
11	<p>Wage Enforcement</p> <p>Unanimously approved by the Task Force.</p> <p>Construction workers need to have the right to take wage complaints to the County when working on incentive projects or County-funded projects under public-private partnership arrangements. The County should retain the right to audit payroll and construction contracts and interview workers to ascertain compliance.</p> <p><u>Planning and Budget Office Comments:</u> Recommend following the Purchasing Office’s method of compliance, which occurs primarily through signage at the construction site, not through monthly reviews of all contractor payroll documents.</p> <p><u>Purchasing Office Comments:</u> None. The Purchasing Office already has this process in place for public works projects, which could be procured under a public-private partnership arrangement or under more traditional delivery methods.</p>	<p>Using the Purchasing Office’s model for monitoring wage compliance, which occurs primarily through signage at the construction site, will provide an avenue for workers to report potential violations while not creating workload issues for County staff.</p>	<p>Any changes to the County’s economic development policy that increase the level of monitoring and compliance may decrease the attractiveness of Austin/Travis County as a good location for new businesses, and will likely result in increased staff workload over time.</p> <p>The County would be able to terminate an incentive agreement due to noncompliance with this requirement, but would not be able to enforce payment of wage rates.</p>

	MAJORITY RECOMMENDATION:	PRO(S)	CON(S)
12	<p>HUB/MBE/WBE Reporting</p> <p>Unanimously approved by the Task Force.</p> <p>Require incentive applicants to follow the guidelines of the County’s HUB program, which would include monthly reporting.</p> <p><u>Planning and Budget Comments:</u> Compliance procedures for incentive agreements are conducted annually, not monthly. Recommend continuing this practice. In most instances, the County will be relying on compliance completed by the City’s MBE/WBE staff.</p> <p><u>Purchasing Office Comments:</u> None.</p>	<p>The County is able to rely on the City’s monitoring and compliance when both parties are participating in the same incentive project.</p>	<p>There could be additional staffing needs over time if a significant increase in “County only” incentive agreements begins to occur and frequency of compliance monitoring is implemented.</p>
13	<p>Increase Maximum Total Tax Incentive by 5 percent</p> <p>Majority of Task Force approved (6-3).</p> <p>Considering the fact that the task force’s proposals impose construction related requirements on incentive applicants, the task force recommends that the County raise the maximum total tax abatement to 85%. This would partially mitigate effects on incentive applicants and keep the County as an attractive and competitive location.</p> <p><u>Majority Opinion:</u> Travis County’s current economic success, when compared to other areas of the country is due, in part, to the fact that the County did not impose constraints on construction aspects of economic development projects. The recently added requirement that contract construction workers be paid the County’s minimum wage erodes its competitive advantage. Additional requirements proposed by this task force would further erode that advantage.</p> <p><u>Minority Opinion:</u> This task force has only recommended the most basic protections for the construction workforce, and a 5% increase of the maximum total incentive amount unduly benefits corporate incentive applicants more than it benefits low-wage construction workers or the average Travis County resident.</p> <p><u>Planning and Budget Office Comments:</u> The Commissioners Court did not take action to make this proposed change to the existing economic development incentive policy. The task force indicated no strong preference for the revision. No further action required.</p>	<p>A higher incentive amount might help mitigate the impact of additional requirements proposed by the task force.</p>	<p>The bigger impact on incentive applicants will be their ability/desire to implement requirements that will cause more recordkeeping (especially by their contractors and subcontractors) and reporting, as well as any perceived or real effect on costs.</p> <p>The maximum rebate of 80 percent was calculated after many discussions at the County staff level and with the Commissioners Court. The current maximum allows rebates to remain within the operations and maintenance portion of the County’s overall tax rate applied to new construction generated by the applicant’s project. The County does not wish to pay rebates beyond these limitations. The City is willing to do so, but has a more flexible revenue base from which to draw funds.</p>