



Office of the Comptroller

Josh Pasch, City Auditor

100 N. Holliday St., Room 321
Baltimore, Maryland 21202

Date: November 1, 2022

To: Mayor Brandon M. Scott
City Hall - Room 250
100 N. Holiday Street, Baltimore, MD 21202

Subject: Management Letter – Additional Observations Noted During from
Agreed-upon Procedures for Local Hiring Memorandum of Understanding

Honorable Mayor Scott:

We completed agreed-upon procedures for evaluating if Sagamore Development Company, LLC (together with Baltimore Urban Revitalization LLC, the “Developer”) complied with the provisions of Part I of the Original Memorandum of Understanding (MOU)¹ titled the New Port Covington Local Hiring Memorandum of Understanding, as modified by the Supplemental MOU (together, the “**Local Hiring MOU**”) for the period September 14, 2016 through December 31, 2020 with the understanding that certain MOU requirements may not be effective prior to the issuance of the Tax Increment Financing (TIF) bonds, which occurred on December 30, 2020 (the “**Effective Date**”). We provided a report for this agreed-upon-procedures to the Developer and City Management in November, 2021. There are an additional two observations that would improve contract monitoring controls we would like to report to you for consideration.

- **Observation I:** We observed that the Local Hiring MOU does not clearly identify and specify a responsible person or party to verify the Developer’s and sub-contractors’ compliance with key contract terms. As a result, no City agencies including Mayor’s Office of Employment Development (MOED) is validating the Developer’s compliance with the Local Hiring MOU. According to MOED, they function as a project coordinator specified by the Local Hiring MOU and are not responsible for contract monitoring. Therefore, evidence supporting local hiring performance measures is not reviewed and validated. Other areas in the Local Hiring MOU, which require monitoring include validation of the following, but are not limited to:
 - \$39M South Baltimore 6 Local Commitment over 20 years funded by commercial for profit tenants’ community benefit contribution surcharge;
 - \$25M commitment to develop programs and initiatives and construction of a workforce development training center;

¹ *New Port Covington Amended and Restated Consolidated Memorandum of Understanding* by and between the Mayor and City Council of Baltimore and the Developer effective September 14, 2016.

Additional Observations Resulted from Agreed-upon Procedures for Local Hiring MOU

- Youth and education commitments including: (1) \$1M scholarships dedication over five years to Baltimore City Public School students and community schools serving high-need students, respectively; and (2) \$7.7M dedication for after-school and summer programming; and
- Improving educational resources to all children within the Cherry Hill, Westport, Brooklyn and Curtis Bay communities and creation of a farmer's market and urban farming.

The observation of a lack of contract monitoring is applicable to other key contract terms included in the MOU; e.g. Suppliers Diversity and Inclusionary Housing. For example, certified payrolls associated with Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) contractors are not remitted monthly to the Office of Equity and Civil Rights. According to the Office of Equity and Civil Rights, they were not aware of this requirement and did not contact the Developer. The MOU includes multiple parties (the Developer and City agencies) that may not be aware of roles and responsibilities resulting in a lack of effective contract monitoring. Without having assigned contract monitor(s) and routine monitoring of key contract terms, the City cannot verify the Developer's and subcontractors' compliance with contract performance and deliverables.

- **Observation II:** We observed that the Department of Audits (DOA) is listed as a "monitor." The DOA can be perceived as performing contract monitoring activities and acting as an extension of management, which is prohibited by the *Government Auditing Standards*.

Therefore, we recommend the Mayor consider:

- Identifying the responsible agencies to monitor the MOU including Local Hiring MOU, Supplier Diversity MOU and Inclusionary Housing MOU;
- Amending the MOU to clarify contract monitoring roles and responsibilities associated with key contract terms and related controls; and
- Requiring responsible City agencies to develop and implement formal (written, signed, dated) policies and procedures that guide the monitoring of key contract terms to validate the Developer's compliance with the MOU and subcontractors' compliance with contract terms.

Respectfully,



Josh Pasch, CPA
City Auditor
City of Baltimore
November 1, 2022

Additional Observations Resulted from Agreed-upon Procedures for Local Hiring MOU

Cc:

- Honorable Comptroller Henry
- Nick Mosby, City Council President
- James L. Shea, City Solicitor
- Jason Mitchell, Director, Department of Public Works
- Eric Costello, Chairman, Biennial Audits Oversight Commission
- Christopher J. Shorter, City Administrator
- Dana P. Moore, Chief Equity Officer / Director, Office of Equity and Civil Rights
- Ebony Thompson, Acting Chief of Staff, Office of the Mayor
- Alice Kennedy, Housing Commissioner, Department of Housing and Community Development
- Christopher R. Lundy, Chief, Minority and Women's Business Opportunity Office (MWBOO)
- Jason Perkins-Cohen, Mayor's Office of Employment Development

Attachments: Management Letter Auditor's Comments and Management's Response

APPENDIX I

Management Letter Auditor's Comments

The Management's Response on page 5 did not address the risk that agencies that should monitor compliance are not made aware of the relevant terms and responsibilities. We noted that the management response identified roles for M/WBE, as well as potential related modifications to the MOU. However, monitoring for other MOU requirements noted in the Management Letter (which was not an inclusive list) that would be relevant to other agencies were not addressed. In addition, the recommendation to develop policies and procedures were not addressed.

We also noted that no response was provided for the recommendation that the Department of Audits not be listed as a "monitor," implying that Audits would be responsible for MOU compliance – a management role. The Department of Audits should not be assigned management responsibilities, as that jeopardizes the independence required to perform independent audits required by Government Auditing Standards.

APPENDIX II

Management's Response

Date: October 24, 2022

To: Josh Pasch, City Auditor

Subject: Management's Response to Management Letter – Additional Observations Resulted from Agreed-upon Procedures for Local Hiring MOU

Our responses to the observations and recommendations are as follows:

Recommendation # 1

We recommend the Mayor consider:

- Identifying the responsible agencies to monitor the MOU including Local Hiring MOU, Supplier Diversity MOU and Inclusionary Housing MOU;
- Amending the MOU to clarify contract monitoring roles and responsibilities associated with key contract terms and related controls; and
- Requiring responsible City agencies to develop and implement formal (written, signed, dated) policies and procedures that guide the monitoring of key contract terms to validate the Developer's compliance with the MOU and subcontractors' compliance with contract terms.

Management Response/Corrective Action Plan:

Agree Disagree

Management concurs with these recommendations and will implement actions to address the issues identified. With regard to the responsible agencies to monitor the MOU including Local Hiring MOU, Supplier Diversity MOU and Inclusionary Housing MOU, they are MOED, MWBOO and HCD respectively.

As part of Management's response, it proposes amending the referenced MOU and in it including and like MOUs thereafter language governing responsibility for reporting payments to all subcontractors on a monthly basis and specific designation of utilization of M/WBE firms in said reporting.

Proposed language would require the Developer on the 15th of each month to report M/WBE utilization for the preceding month to the MWBOO. The MWBOO would be required to take the necessary steps to review and validate all reports. Validation efforts

Additional Observations Resulted from Agreed-upon Procedures for Local Hiring MOU

would advance in the form of on-site compliance reviews; project site, office, and document. Language under consideration for inclusion in the amended MOU and others like it in the future is as follows:

General Requirements

The spirit and intent of the City is to afford small, minority and women-owned businesses the opportunity to perform viable and meaningful services in a teaming effort or prime position. It is the desire of the City to maximize notice, and the opportunity to participate in the solicitation process, to a diverse and broad range of small, minority and women-owned businesses. The governing code and M/WBE program requirements are: Baltimore City Code Article 5, Subtitle 28 (Minority and Women’s Business Program).

In accordance with the M/WBE participation plan, the Developer shall promptly submit an updated M/WBE participation plan detailing the Developer’s continuing responsibility to meet its M/WBE commitments including good faith efforts to accomplish M/WBE participation on the project. The Developer’s M/WBE participation plan shall adhere to a system of reports and procedures that will document adjustments and maintenance to M/WBE participation.

Subcontractor Report

As part of the monthly progress report, the Developer shall submit a subcontract report which shall:

- a. Include an updated list of subcontractors, at all tiers;
- b. Identify M/WBE firms and to the extent applicable, M/WBE firms, and the location where the subcontractors worked;
- c. Include results of all procurements consummated in the previous month, including those procured competitively and by other means;
- d. Indicate the type of work or product procured and size of the procurement (in dollars), the names of firms competing for the subcontract, and the name of the selected subcontractor;
- e. Indicate the total number of subcontractors and the total dollar value of all subcontractors awarded to date;
- f. Show the total number of subcontractors and the total value of subcontracts awarded to M/WBE firms to date; and
- g. Indicate, for each subcontract, the following:
 - The original subcontract amount;

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- The value of any modifications to date; and
- Payments to date.

Compliance

As requested by the City, the Developer shall report to MWBOO regarding all attempts to comply with M/WBE participation.

- A listing of unpaid subcontractor invoices over 30 days old, and the reason payment has not been remitted made;
- Provide right-of-entry at reasonable times to enable the City's representative to verify compliance with M/WBE participation requirements, including inspecting any relevant matter, conducting periodic reviews, reviewing records, and visiting jobsites to fulfil compliance reviews;
- The Developer shall report any anticipated failure to meet the City's reporting deadlines to the MWBOO.

Although all of these reporting requirements are not currently specifically required by the terms of the MOU, the Developer has developed and maintained a platform for reporting requirements, Klaros. The platform is the repository of payment data, statements of intent, and reports regarding M/WBE utilization and local hiring. All contractors working on the project are required to upload data and or reports to Klaros. MWBOO and MOED have access to the platform. We will ensure that all requirements are identified and captured within the platform.

The aforementioned concludes our management response.

Implementation Date: February 28, 2023

Responsible Personnel: Christopher Lundy, Chief, MWBOO