

Community Inclusion Update 4

Feb. 19, 2008

Introduction:

This report is the latest in a continuing series on the Cleveland Municipal School District's compliance with the Board of Education's directives regarding community inclusion in contracting and hiring in the District's school facilities program.

Those directives are contained in the board's Resolution 2001-159(B), approved April 23, 2001, which is regarded as containing promises to the voting public before approval of the program-funding Issue 14 on the May 2001 ballot.

Information for this report has been obtained primarily from School District documents as well as interviews and correspondence with District administrators. After months in which the BAC received few satisfactory responses to the issues raised below, we now have some progress to report.

Summary

- The Administration reports meeting its goals for workforce participation by minorities but not by CMSD residents or women. The BAC's analysis of statistics provided by the District Administration shows an apparent trend of declining achievement in meeting those goals for the program's major projects. The analysis found no itemized workforce reporting for numerous small, locally funded projects. Upon being alerted to this, the District Administration promised to investigate.
- The District's monthly reports on contracting with minority- and female-owned businesses (Diversity Business Enterprises, or DBEs), while indicating commitments from prime contractors, do not necessarily reflect the amount of work actually done by DBE contractors and subcontractors. The Administration now promises a major effort to overhaul its reporting methodology to provide reliable, verifiable figures.

- The Administration, as of Jan. 7, 2008, now has a Diversity Officer specifically assigned to monitor contractor compliance with pledges regarding workforce participation and subcontracting, as required by its Community Inclusion Program Statement.
- The District has not established a formal pre-contract written certification from successful bidders that they meet or will attempt to meet the CMSD workforce participation goals for minorities, women and District residents, as called for by its Community Inclusion Program Statement.
- The Administration bases its workforce-participation statistics on certified payroll reports from contractors. The Diversity Officer will perform random checks of these reports to verify accuracy. The Administration is looking into the feasibility of technological improvements to aid this process.
- The Administration reports efforts to improve its pre-apprenticeship programs, which have struggled to place students in union apprentice programs. So far it has provided no details, but it says a major announcement is forthcoming. Issues previously identified by the BAC include union reluctance to participate on grounds of District refusal to relieve unions of financial responsibility for student injury, lack of transportation for student field trips and on-the-job training, inadequate math skills, and lack of adequate student workforce preparedness.

Workforce participation

The District's goals for workforce participation in the Issue 14-funded School Facilities Project, as outlined in board Resolution 159(b) and the District's Community Inclusion Program Statement are: minorities, 20 percent, females, 5 percent; and CMSD residents, 20 percent. The chart below summarizes figures reported by the Administration as of Dec. 18, 2007.

Project/Segment	Total Hrs	Minority		Female		CMSD Resident	
Grand Totals	1,746,840.88	352,640.89	20.19%	73,785.85	4.22%	335,573.51	19.32%
Warm, Safe, Dry	158,941.91	32,703.10	20.58%	5,836.00	3.67%	31,734.30	19.97%
Segment 1 Schools	951,671.32	211,257.09	22.20%	39,770.10	4.18%	197,372.46	20.74%
Segment 2 Schools	535,907.40	86,534.45	16.15%	22,022.75	4.11%	79,758.50	14.88%
Segment 3 Schools	38,630.25	4,365.75	11.30%	705.50	1.82%	4,942.00	12.79%
Segment 4 Cleaveland Demo	908.50	654.00	71.99%	0.00	0.00%	551.00	60.65%
Small projects	60,781.50	20,589.00	33.87%	5,452.50	8.97%	23,215.25	38.19%

The Grand Totals reported for the entire program show that the Administration reports having met the goal for minority participation, but not for women or CMSD residents. Segments 1 and 2 and the Warm, Safe and Dry initiative are complete. The entire program currently has nine segments. Segment 3 is under way, and Segment 4 is in the design and demolition phase.

The Grand Total for female participation, 4.22 percent, is 15.6 percent below the goal. As the chart shows, no part of the facilities program except for small projects has met the goal for female participation.

The Grand Total reported for participation by CMSD residents, 19.32 percent, is 3.4 percent below the goal. The reported participation showed a significant decline from the Warm, Safe and Dry program and Segment 1 schools, which began the program, to Segment 2. Again, participation was markedly improved for Small Projects, which, as with the female participation, was due almost entirely to the District's Facelift program.

Hiring and contracting for Facelift was done directly by the District, not under Ohio School Facilities Commission (OSFC) rules that governed the major projects of the program. This could be interpreted as demonstrating the Administration's commitment to meeting the program's hiring goals and its rapport with local trades unions, and it also calls into question any arguments by contractors or unions that minority and female workers are not available in the labor pool. It also suggests a need for increased efforts to monitor and improve contractor compliance on major projects. This may be possible now that the Administration has a Diversity Officer specifically assigned to this function.

The figures for Segment 3, while far below the goals, may be somewhat misleading, because construction has only recently begun. Most of the work so far has been site preparation, excavation, concrete work, and installation of load-bearing masonry walls and steelwork. Still, the figures may suggest that contractors involved in such work need special encouragement to increase efforts to meet the goals.

Indeed, after protests in December 2007 outside the Patrick Henry preK-8 site over inclusion issues, the Administration met separately with involved prime contractors and union officials and then held a joint meeting with them Jan. 17, 2008, to discuss how all parties could cooperate to improve inclusion performance.

Figures for Segment 4 are not yet sufficient to be statistically significant.

In analyzing the District's reports, the BAC noticed that there appears to be no itemized workforce participation accounting for a number of relatively small projects financed under the Locally Funded Initiative, which is work not co-funded by the OSFC. Inclusion of such statistics could change the overall picture of workforce participation. Upon learning about this finding, the Administration acknowledged that it may not have been reporting workforce data for work in such areas as architecture and engineering, surveying, and geo-technical and environmental matters.

DBE Contracting

The District Administration reports that 34.04 percent of contract dollars has been designated for minority- or female-owned businesses as of Dec. 31, 2007, exceeding the program goal of 30 percent. However, as stated in previous BAC updates, the District's reporting on this subject is based on pledges by prime contractors and as such does not necessarily reflect actual dollars paid.

The BAC has repeatedly encouraged the Administration to report actual spending. The Administration's Capital Programs office, which now has a beefed-up staff including the Diversity Officer, is now working to devise and implement such an audit process.

The process as outlined would involve comparing sub-contractors and suppliers on OSFC-required lists from prime contractors with those listed on pre-contract good-faith certifications given to the District by prime contractors (the above-mentioned pledges). The process also is to include tallies of post-construction "closeout" documents to confirm amounts actually paid, beginning with Segment 1. If successful, this effort would be a great improvement over the reporting to date.

Diversity Officer

As mentioned in several BAC updates, the school facilities program lacked a Diversity Officer assigned to monitor workforce participation and DBE contracting/subcontracting in Issue 14-funded projects, even though the District's Community Inclusion Program Statement called for such an officer.

Effective Jan. 7, 2008, the District now has such an officer.

Among many listed duties, this officer is assigned to do the following:

- Make presentations at pre-bid meetings with contractors at which community-inclusion goals are detailed.
- Participate in post-bid reviews of bidders' certifications that they will make good-faith efforts to comply with the inclusion goals.
- Perform site inspections and oversee monitoring of contractor performance in fulfilling good-faith pledges.
- Identify failure of contractor good-faith efforts and facilitate corrective-action meetings with the contractors.
- Ensure that inclusion complaints are addressed and communicated to CMSD executives.
- Serve as liaison to community development corporations and other entities to help build DBE and workforce capability and participation.

Again, successful execution of these duties would be a great improvement over the previous situation.

Pre-apprentice program

The pre-apprenticeship construction program at Max Hayes High School is regarded as having potential to increase employment of CMSD residents in the jobs provided by the school facilities program. However, the program so far has had very limited success in fulfilling that potential.

The BAC previously noted a number of problem areas and has suggested possible improvements.

Among those problems are union reluctance to participate on grounds of District refusal to relieve the unions of financial responsibility for student injury, lack of transportation for students for field trips and required on-the-job training, union complaints of inadequate math skills, lack of certain training deemed by unions to be necessary, and lack of adequate student preparedness to participate successfully in the workforce.

Among the BAC's suggestions was a recommendation to participate cooperatively with the Union Construction Industry Partnership-Apprenticeship Skills Achievement Program (UCIP-ASAP). This is an unpaid two-month program designed to train participants for acceptance into union apprenticeships.

To date, no improvements have been announced, although the BAC has been told that a major announcement is forthcoming in the nature of an agreement with the UCIP regarding not only priority acceptance in the ASAP program but also curriculum changes at Max Hayes that may allow 2009 Hayes graduates to "test out" of the ASAP program and directly enter union apprenticeships. Financial aid for Hayes students is also a possibility. So far, we know only that UCIP-ASAP has agreed in principle to accept a class of 2008 Max Hayes graduates, but a class date has not been announced.

We eagerly await further developments and note that this year's Max Hayes seniors will be graduating in May and need to know what opportunities they will have this summer.

Conclusion

The reporting of accurate workforce-participation statistics and monitoring of contractor performance in these areas are important because OSFC rules require acceptance of the lowest responsive bids. The key word here is "responsive," which means that the bidder not only certifies that it *will make* a good-faith effort to meet the goals but also that it *does make* a good-faith effort. Failure to do both means that a contractor can be rejected for future work even if it submits the lowest bid, because it has been non-responsive in the past.

To our knowledge, no bidder in the capital facilities program has ever been rejected for being non-responsive in the area of community inclusion. We understand that such a rejection may be imminent in the case of recently opened

bids for the Segment 3 Willson preK-8 project, based on bidder failure to submit required Community Inclusion documents. This, however important, would be different than rejecting a bidder because of inclusion-effort shortcomings on previous contracts.

Without accurate reporting and monitoring, the District would be hard-pressed to document unresponsiveness on past contracts if it wished to disqualify a bidder, and the District would probably face a legal battle if it tried to do so. In practical terms, that means contractors have had little incentive to actually do what they pledge to do.

Now the District Administration is laying the groundwork for such documentation, and that should mean that contractors eventually will be under added pressure to help achieve the District's goals for community inclusion.

The above improvements announced or promised by the Administration can make great strides in rectifying some of the capital facilities program's shortcomings regarding community inclusion. As such we commend them. Of course whether they succeed will depend on the execution, so we encourage the Administration to be vigilant in that regard and to make further reforms as well.

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