

# **CITY OF TACOMA**

## **EQUITY IN CONTRACTING (EIC) PROGRAM REGULATIONS**

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## I. Introduction

Tacoma Municipal Code (TMC) Chapter 1.07 authorizes the City of Tacoma’s Equity in Contracting (EIC) Program (Program) to address the historical underutilization and lack of participation of small, women and minority owned businesses in City contracts for supplies, services, and public works. TMC 1.07.040 authorizes the Community and Economic Development Department (CEDD) Director to adopt these administrative EIC Program Regulations (Regulations).

For questions, observations or recommendations related to these Regulations, please contact the EIC office at (253) 591-5826 or by email at [EICoffice@cityoftacoma.org](mailto:EICoffice@cityoftacoma.org).

## II. Objectives, Applicability and Overall Annual EIC Goal

The purpose of the EIC Program and of these Regulations is to advance the policy set forth in TMC 1.07.010: to “facilitate a substantial procurement, education, and mentorship program designed to promote equitable participation by historically underutilized businesses in the provision of supplies, services, and public works to the City.” These Regulations are intended to aid and guide City staff, Certified Businesses, Contractors and Suppliers and other stakeholders, to ensure the Program is implemented clearly and consistently and to encourage, facilitate and assist the participation of Certified Businesses in City of Tacoma contracts.

The current annual EIC goal is 20%, which was reached by utilizing [the City of Tacoma’s most recent disparity study](#) to determine the level of Certified Business participation in City Contracts expected in the absence of persistent effects of discrimination. The dollar value of all contracts awarded to or performed by Certified Businesses shall be counted toward the annual EIC goal. The EIC goal may be updated or changed in alignment with future disparity studies.

Currently the EIC Program is requiring participation by Certified Businesses only on contracts for public works. The Program is intended to apply to all City contracts for supplies, services, and public works (other than those contracts subject to exemption, exception, or waiver) and these Regulations will be updated as the City develops specific requirements and processes for Certified Business participation in contracts for supplies and services.

### III. Definitions

Terms used in these Regulations shall have the following meanings unless defined differently in Tacoma Municipal Code Chapter 1.07, in which case the definition contained in TMC controls

**“B2Gnow”** is the system utilized by the City of Tacoma Equity in Contracting (EIC) Staff to track payments to Contractors and all Subcontractors on all Public Works and Improvements projects including Equity in Contracting (EIC) Requirements.

**“Bid”** means an offer submitted by a Respondent to furnish Supplies, Services, and/or Public Works in conformity with the Specifications and any other written terms and conditions included in a City request for such offer.

**“Bidder”** means an entity or individual who submits a Bid, Proposal or Quote. See also “Respondent.”

**“Certified Business”** means an entity that has been certified as a Disadvantaged Business Enterprise (“DBE”), Small Business Enterprise (“SBE”), Minority Business Enterprise (“MBE”), Women Business Enterprise (“WBE”), or Minority and Women’s Business Enterprise (“MWBE”) by the Washington State Office of Minority and Women’s Business Enterprise.

**“City”** means all Departments, Divisions, and agencies of the City of Tacoma.

**“Change Order”** means a reduction or change to the contracted scope of work potentially affecting the Equity in Contracting Requirements initially set on a project.

**“Contract”** means any type of legally binding agreement regardless of form or title that governs the terms and conditions for procurement and performance of Public Works and Improvements and/or Non-Public Works and Improvements, Supplies and Services.

**“Contractor” or “Supplier” or “Bidder”** means any Person that presents a Submittal to the City, enters into a Contract with the City, and/or performs all or any part of a Contract awarded by the City, for the provision of Public Works, or Non-Public Works and Improvements, Supplies or Services.

**“Disparity Study”** is a study that determines whether a government entity, either in the past or currently, engages in exclusionary practices in the solicitation and award of contracts to small, minority, women-owned, and disadvantaged business enterprises. The primary goal of the study is to assess, quantify, and evaluate the prevalence, significance (degree and weight) and scope of discrimination in the marketplace.

**“Exception” or “Exemption”** means the limited circumstances in which EIC Requirements do not apply or will not be applied to a Contract.

**“EIC Manager”** is the individual authorized by TMC to administer the Equity in Contracting Program.

**“EIC Requirements” or “Contract Requirements”** are the specified Requirements for Certified Business participation applied to a Contract using the EIC Requirements Setting Methodology.

**“EIC Requirement Setting Methodology”** is as defined in Appendix No. 1 to these Regulations.

**“EIC Staff”** means Equity in Contracting Program staff.

**“Exception Request”** means a request that no EIC requirements be applied to a Contract. See Appendix No. 3 to these Regulations.

**“Goal”** means the annual level of participation by Certified Businesses in City Contracts as established in The Tacoma Municipal Code TMC 1.07.020G, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations.

**“LCPtracker”** is the system used by the Local Employment and Apprenticeship Program (LEAP) Staff to monitor compliance with LEAP workforce utilization requirements and prevailing wage law.

**“Non-Public Works and Improvements”** means procurement of and contracting for Supplies and/or Services not solicited as Public Works.

**“Notice of physical completion”** means all physical work is done and the contractor has left the site. However, there may still be some outstanding paperwork or documentation remaining.

**“Notice of substantial completion”** means all physical work is complete except for punch list items. Only minor incidental work remains, such as minor corrections or repairs.

**“Person”** means individuals, companies, corporations, partnerships, associations, cooperatives, any other legally recognized business entity, legal representative, trustee, or receivers.

**“Program Manager”** means the individual appointed by the City’s Community and Economic Development Director to administer the Program and these Regulations.

**“Program Regulations” or “Regulations”** means these Regulations.

**“Project Delivery Team”** refers to the City of Tacoma personnel working on the project from the Department or Division awarding and administering the Contract.

**“Proposal”** means a written offer to furnish Supplies or Services in response to a Request for Proposals. This term may be further defined in the Purchasing Policy Manual and/or in competitive solicitations issued by the City.

**“Public Works (or “Public Works and Improvements)”** means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the City, or that is by law a lien or charge on any property therein, as is defined in RCW Chapter 39.04 and as may be hereinafter amended. This term includes all Supplies, materials, tools, and equipment to be furnished in accordance with the Contract for such work, construction, alteration, repair, or improvement.

**“Responsive or Responsible Bidder”** is as defined within the City of Tacoma Purchasing Policy.

**“Quote”** means a competitively solicited written offer to furnish Supplies or Services by a method of procurement that is less formalized than a Bid or a Proposal.

**“Respondent”** means any entity or Person that provides a Submittal in response to a Request for Bids, Request for Proposals, Request for Qualifications, Request for Quotes or other request for information, as such terms are defined in TMC Chapter 1.06 and in Purchasing Policy and Procedures.

**“Requirements”** means the level of required participation by Certified Businesses in City Contracts as established by TMC Chapter 1.07, the Program Regulations, or as necessary to comply with applicable federal and state nondiscrimination laws and regulations.

**“Services”** means non-Public Works and Improvements services and includes professional services, personal services, and purchased services, as such terms are defined in Chapter 1.06. TMC and in Purchasing Policy and Procedures.

**“Specification”** means the document and any subsequent addenda, including terms and conditions that describes the physical or functional characteristics, or the nature of the required Supplies, Services, or Public Works; commonly referred to as the Bid document or Bid Specification.

**“Submittal”** means Bids, Proposals, Quotes, Qualifications, or other information submitted in response to Requests for Bids, Requests for Proposals, Requests for Qualifications, Requests for Quotations, or other City requests for information, as such terms are defined in Chapter 1.06 TMC and in Purchasing Policy and Procedures.

**“Supplies”** means materials, supplies, and other products that are procured and contracted for by the City.

**“Tacoma Public Utilities Service Area”** means any ZIP code in which Tacoma Public Utilities maintains infrastructure or provides retail services.

**“Undue hardship”** means an action that places a significant burden on a business.

**“Waiver”, with regards to the Post-Bid EIC Waiver Process,** means a discretionary decision made by the City after Bids are received that EIC Requirements, in whole or in part, will not be applied to a Contract or Contracts.

## IV. Exemptions or Exceptions to EIC Program Requirements

### A. Contracts that are not competitively solicited by the City of Tacoma.

No EIC Requirements will apply to contracts awarded in the manners listed below. These contracts are exempt from EIC Requirements, and no Exception Request is needed to be completed:

1. **Emergency** (TMC 1.06.257.C). Situations where breakage or loss of equipment has or is about to interrupt necessary services, where public health or safety may be jeopardized, or when required by regulatory agency, or state law. If the supplies, services, or public works must be provided with such immediacy that neither the City nor the contractor can comply with the EIC Requirements, none will be applied. Such emergency will be deemed

documented whenever a waiver of competitive solicitation for emergency situations is authorized under Tacoma Municipal Code Chapter 1.06.257 or as may be hereinafter amended.

2. **Sole Source** (TMC 1.06.257.A and 1.06.258). If the supplies, services, or public works are available from only one feasible source, and subcontracting possibilities do not reasonably exist as documented by the Department or Division awarding the Contract. Such circumstance is documented by the approval of the Procurement and Payables Division Manager or delegee and for Contracts where the estimated cost is over \$500,000 (excluding sales tax) by the approval of the Contracts and Awards (C&A) Board.
3. **Not Practicable to Bid** (TMC 1.06.257.B). An immediate and important need for proposed construction, installation, repair, materials, supplies, equipment, or services where the delay that would result from following competitive solicitation process would cause financial loss to the City or an interruption of vital services to the public. Such circumstance is documented by the approval of the Procurement and Payables Division Manager or delegee and for Contracts where the estimated cost is over \$500,000 (excluding sales tax) by the approval of the C&A Board.
4. **Direct Solicitation and Negotiation** (1.06.256.B). Contracts for Professional or Personal Services, excluding architectural and engineering services. When City Manager or Director of Utilities or their delegees determine use of direct solicitation and negotiation process to be in the best interests of the City no EIC requirements will be applied to the resulting contract.
5. **Government or Cooperative Purchasing**.  
The Contract is the result of a federal, state, or inter-local government purchasing agreement and the use of such agreement in lieu of a bid solicitation conducted by the City is in accordance with TMC Chapter 1.06 and Purchasing Policy and Procedures.

## B. Lack of Certified Businesses

If it is determined there are an insufficient number of Certified Businesses to perform the work scopes listed in the Contract, no EIC Requirement will be applied. The process for requesting and approving an exception for lack of Certified Businesses is as follows:

1. If after Program review of a project using the established EIC Requirement setting methodology, it is determined by EIC Staff that there will be an insufficient number (3 or less) of Certified Business available to meet the requirement, EIC Staff sends an Exception Request to EIC Manager for review and approval.

2. If, after EIC Staff has set EIC Requirements on a project, the Project Delivery Team determines that additional information justifies an exception for lack of Certified Business, the Project Delivery Team sends an Exception Request via email to the EIC Team who will then forward it to the EIC Program Manager with necessary project background information for final review and approval.

## C. Public Works and Improvement Projects with a Value of \$150,000 or Less

EIC Requirements will not be set on public works and improvement projects with an engineer's estimate value of \$150,000 or less. However, EIC Staff will collaborate with the Project Delivery Team to proactively outreach to Certified Businesses and provide technical assistance to encourage participation.

## D. Documentation of Granted Exceptions

All exceptions must be documented in the Program's reporting and goal spreadsheet database. Analysis will be done by the EIC Manager to understand what measures the City can take to ensure that exceptions to the EIC Requirements occur only when necessary.

# V. EIC Requirements for Contracts for Public Work

All City contracts for Public Work – except for projects with an engineer's estimate value of \$150,000 or less – are subject to EIC Requirements. In no case will EIC Requirements exceed a total of 20 percent (20%) of the Engineer's estimate. If a contract is federally funded, any federal program supersedes the Equity in Contracting Program and these regulations.

## A. EIC Pre-Award Process

### 1. EIC Contract Requirements Set

Using the EIC Requirements Setting Methodology contained in Appendix No. 1 to these Regulations, EIC Staff will set requirements for the use of Certified Businesses using two potential options.

**Option 1:** EIC Staff applies three (3) separate requirements (MBE, WBE, SBE) in accordance with the EIC Requirements Setting Methodology. Each stated Requirement must be fulfilled by using the specified category of Certified Business.



**Option 2:** If after setting the EIC Requirements, reviewing the OMWBE directory, and discussing with the Project Delivery Team, it is determined that fulfilling each requirement separately might present undue hardship for contractors, EIC staff will apply an overall EIC Requirement. The overall EIC Requirement is the sum of the 3 separate requirements initially established as a result of using the EIC Requirement Setting Methodology. Under Option 2 Bidders can use any combination of MBEs, WBEs, SBEs or DBEs to fulfill the overall EIC Requirement.

Staff guidance for determining if an overall EIC Requirement Option 2 is appropriate can be found in Appendix No. 2 to these Regulations.

After utilizing Option 1 or Option 2 to set the EIC Requirements, EIC staff will send an EIC Memo to the Project Delivery Team informing of the EIC Requirements for the project.

## B. EIC Bid Review Process

Contracts for Public Work must be awarded to the lowest responsive and responsible Bidder. EIC Program Staff conducts a review of Submittals for EIC compliance.

### 1. Review for Bidder Responsiveness

- i. Bids must list Certified Businesses. If a listed business is not certified with OMWBE as of the date of bid opening the bid will be recommended to be rejected as non-responsive.
- ii. All sections of the EIC Utilization form located in Appendix No. 3 to these Regulations must be completed according to the stated instructions and the properly completed form must be included with bid submittal.
- iii. Submittals that do not include a properly completed EIC Utilization form will be recommended by EIC Staff to be rejected as non-responsive bids. To be considered “completed”, the required forms must be filled out with all the information required to be provided. No fields should be left incomplete or designated N/A or otherwise lacking a required response. EIC Staff reserves the right to make minor non-material corrections to the form, such as to correct obvious data entry errors. No corrections will be made that alter the proposed Certified Business participation percentages and dollar amounts.
- iv. The work description for each Certified Business listed on the EIC Utilization form must match the Certified Business’s OMWBE Profile. This ensures that the Certified Business is able to complete the work scope or role for which they have been listed.
- v. Bidder must contact and solicit bids from Certified Businesses prior to listing them on the EIC Utilization Form and prior to bid submittal. EIC Staff will contact all listed Certified Businesses. If a listed Certified Business has not been contacted by the Bidder prior to being listed, the bid will be rejected as non-responsive.

## 2. Review for Bidder Responsibility

- i. The EIC Utilization Form must demonstrate that the bidder has obtained enough EIC participation to meet or exceed the EIC Requirements for that contract. Submittals that do not meet or exceed the stated requirements will be recommended to be rejected as non-responsible bids.

## 3. Self-Performing Bidders

Bidders who are themselves Certified Businesses can meet the EIC requirements by self-performance. When a Certified Business is the prime bidder, an adjustment may be made to the EIC Requirements. In such cases, the self-performing Certified Business can be found to be a responsible bidder even if the bid did not satisfy all three stated EIC Requirements (SBE, MBE and WBE). For example, if a bidder is certified as an MBE and an SBE, the WBE Requirements may be deemed waived since the Contractor's self-performance as an MBE and an SBE achieves the total Requirement.

## 4. EIC Recommendation

- i. If the apparent low bidder is deemed non-responsive or non-responsible, EIC Staff will review the next lowest bidder's submittal.
- ii. Once EIC Staff has reviewed the EIC portion of the submittal, a bid review memo is sent to the Project Delivery Team to notify them of the status of the apparent low bidder and will include any recommendation to reject submittals as non-responsive or non-responsible.

## VI. Post-Bid EIC Waiver Requests Process

Per TMC 1.07.060 (C), if, after receipt of submittals but prior to Contract award, it is determined that due to unforeseen circumstances (which may be demonstrated by bidder(s) failure to meet the stated Requirements) waiver of the stated EIC Requirements in whole or in part for the project is in the best interest of the City, the Director or Superintendent of the Project Delivery Team may request the stated EIC Requirements be waived in full or in part.

The waiver request must be made using the EIC Waiver Request Form shown in Appendix No. 4 to these Regulations and initiated by the applicable Director or Superintendent of the Project Delivery Team. The form is then forwarded to the Procurement and Payables Division Manager for review and signature,

followed by the City Manager or the Director of Utilities for review and signature. EIC Staff notifies the Project Team of the decision made.

If the Waiver Request is approved by the City Manager or Utilities Director, any new EIC Requirements will be equal to the EIC Utilization percentage listed on the successful bidder's EIC Utilization form (which could be zero).

If the Waiver Request is not approved by the City Manager or Utilities Director, the Project Delivery Team must re-bid the project or award to the next lowest bidder who has satisfied the stated EIC Requirements.

In all instances where a Waiver is approved by the City Manager or Utilities Director, analysis will be done by the EIC Manager to understand what measures the City can take to ensure that waivers of the EIC requirements are granted only when absolutely necessary.

## VII. EIC Contract Monitoring and Compliance

All contracts will be monitored by the Program to ensure compliance with the stated EIC Requirements throughout the term of the Contract including as follows:

### A. Coordination between Project Delivery Team and Program

During the term of the contract, the Project Delivery Team will include EIC Staff in the pre-bid, pre-construction, and progress meetings. Additionally, the Project Delivery Staff will send Contract & Award (C&A) Letters, Notice to Proceed and Notice of Physical Completion to EIC Staff.

### B. Utilization of B2Gnow System

1. Once EIC Staff receives the Notice to Proceed, the Project is created in B2Gnow.
2. Once the Project has been created in B2Gnow by EIC Staff, a letter is automatically sent from B2Gnow to the Contractor and all Certified Businesses included in the project to notify them of the new project and what is expected of them in the B2Gnow System.
3. Contractors must utilize B2Gnow by entering their monthly payment reports in the system. EIC Staff tracks EIC utilization by ensuring all payment reports are entered monthly by the Project Delivery Team and the Contractor and payments are confirmed by the Subcontractors.

## C. B2Gnow Monitoring

### 1. Prompt Payment

For the full lifecycle of the project, on a monthly basis, EIC Staff must ensure the following actions have occurred in the B2Gnow system:

- a. The Department/Division in charge of the contract has entered payment submitted to the Contractor.
- b. The Contractor has entered payments submitted to all Certified Businesses.
- c. The Certified Businesses have confirmed prompt receipt of payments from the Contractor for work performed. In compliance with the WA State Legislature Revised Code of WA (RCW) 39.04.250 (1) \*, EIC Staff will verify that subcontractors are paid no later than 10 days after the Prime receives payment from the City of Tacoma Department/Division in charge of the contract.

\*RCW 39.04.250 (1) "When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein.

2. If the above actions have not taken place or if there are any discrepancies in the system, EIC Staff will reach out to the parties involved via a notice generated from the B2Gnow System, via email or via phone call to address any discrepancies. Any notes related to the projects will be entered in the B2Gnow system.
3. For support using B2GNow, please contact EIC Staff at (253) 591-5826 or email at [EICoffice@cityoftacoma.org](mailto:EICoffice@cityoftacoma.org).

## D. Contractor Request for Certified Business Termination and Substitution

A Contractor's noncompliance by failure to utilize a Certified Business required by the Contract can be excused if Contractor has properly requested to terminate, reduce, or substitute the participation of a Certified Business on an awarded Contract and such request has been approved by the EIC Program consistent with TMC 1.07.080 A. The process for termination and substitution request and approval is initiated by the Contractor following the instructions outlined in the EIC Certified Business Termination and Substitution Form located in Appendix No. 5 to these Regulations.

Upon receipt of the completed EIC Certified Business Termination and Substitution Form, the Project Delivery Team will forward the request to EIC Staff along with supporting documentation received from the Contractor.

**1. EIC Staff will proceed with the following steps:**

- a. Review the request, including any response or objection from the Certified Business, to determine if the grounds for termination (or substitution) contained in TMC 1.07.080 A 1 (Certified Business refusal to execute necessary agreements with Contractor, Certified Business defaults on agreements with Contractor or other reasonable excuse) and the process required by these Regulations have been satisfied. EIC staff review will utilize the criteria for reasonable excuse contained in these Regulations.
- b. Contact the Certified Business(es) proposed to be terminated as well as the Certified Business(es) proposed to be substituted.
- c. If Contractor has indicated on the Certified Business Termination and Substitution Form that it does not have a substitution plan, EIC staff will review the Contractor's explanation for not proposing a substitute Certified Business according to the criteria in TMC 1.07.080 A 2. Where it is shown by Contractor that no other Certified Business is available as a substitute and that failure to secure participation by the Certified Business identified in the solicitation is not the fault of the Contractor, EIC staff will approve substitution with a non-Certified Business; provided, that, the substitution does not increase the dollar amount of the bid.
- d. If EIC staff determines that the process has been followed and that one or more of the grounds in TMC 1.07.080 have been satisfied to allow termination and substitution, the Contractor will be notified of the approval.
- e. Contractor has 3 business days of receipt of the approved termination request to confirm to EIC Staff that it has substituted with another Certified Business, or with a non-Certified Business if the EIC Program has approved.

If the Termination and Substitution Request submitted by the Contractor is denied, the Contractor must utilize the Certified Business on the project as initially listed on the EIC Utilization form or be found in noncompliance.

**2. Reasonable justifications for Termination**

For purpose of the EIC Program, reasonable justifications for termination are included in this list below but not limited to:

- a. The listed Certified Business refuses or fails to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that reasonable excuse does not exist if the failure of the Certified Business to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
- b. Failure or refusal of the Certified Business to perform work for reasons other than contract term or pricing disputes.

- c. The listed Certified Business fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
- d. The listed Certified Business is ineligible to work on City of Tacoma projects because of suspension or debarment.
- e. The listed Certified Business voluntarily withdraws from the project and provides The City of Tacoma written notice of its withdrawal.
- f. Death or disability of the principal of the Certified Business rendering it unable to perform the work.
- g. Dissolution of the Certified Business.
- h. A change in scope of the contract requested by the City which removes the work scope for the Certified Business from the project.
- i. The Certified Business does not execute an offered contract that reflects the terms and pricing agreed upon as a condition of participation in the project. The Contractor must provide evidence that the Certified Business failed to execute a contract offered which reflected such agreements, after the Certified Business was given adequate time to execute the offered contract.

### **3. Decertification**

When a Certified Business is "decertified" by OMWBE the participation of that Certified Business shall continue to count as EIC participation so long as the subcontract with the Certified Business was executed prior to the effective date of decertification.

If the Certified Business did not have an executed contract with the Contractor at effective date of decertification, the Contractor must demonstrate to the satisfaction of the Project Delivery team and to the EIC Program that it has substituted a different Certified Business.

## VIII. NON-COMPLIANCE: FINDING OF VIOLATION AND PENALTIES

### A. Circumstances for finding a Contractor in Violation

The following circumstances, if found by the EIC Program Manager, are grounds for a determination by the Community and Economic Development Department (CEDD) Director of Contractor violation and a recommendation by the CED Director to the City Manager or the Director of Utilities that a penalty be imposed consistent with TMC 1.07.010:

1. A Contractor's failure to utilize a Certified Business required by an awarded Contract (unless the Certified Business participation is properly terminated or substituted by application of the process contained in these Regulations) for at least the corresponding dollar amount listed on the submitted EIC Utilization Form.
2. A Contractor's failure to utilize the B2Gnow system in the manner required by these Regulations. Before a violation will be found for Contractor's failure to utilize B2Gnow the following process steps will be taken:
  - a. If a Contractor does not report payment in the B2Gnow system within the first 2 months of the start of the project, EIC Staff will give the Contractor a verbal notice, followed by an email offering assistance with B2Gnow if needed.
  - b. If in the third month following the start of the project Contractor still does not report payment in the B2Gnow system EIC Staff will send a second notice via email with a copy to the Project Delivery Team.
  - c. If the Contractor has failed to report payment in the B2Gnow system within 14 days of the second notice, a third notice will be sent with a copy to the Project Delivery Team.
  - d. If after three notices, Contractor fails to report payment in the B2Gnow system, EIC Staff will notify the Project Delivery Team that the EIC Staff intends to recommend to the City Manager or Utilities Director that a violation be found, and a penalty imposed.
3. A Contractor's failure to pay their subcontractor within 10 days after receipt of payment per RCW 39.04.250 (1)
  - i. If a contractor fails to pay their subcontractor within 10 days, EIC Staff will send 3 notices (via email).

- ii. If after three notices Contractor fails to pay their subcontractor, EIC Staff will notify the Project Delivery Team that the EIC Staff intends to recommend to the City Manager or Utilities Director that a violation be found, and a penalty imposed.

## B. Contractor Non-Compliance, Finding of Violation and Enforcement

If the EIC Program Manager, in collaboration with the Project Delivery Team, determines a Contractor is non-compliant with the EIC Requirements of the Contract or any other requirements contained in TMC Chapter 1.07 or these Regulations and therefore in violation of the EIC Program requirements, the following process for enforcement will be followed:

1. EIC Staff will send a Notice of Violation to the Contractor via USPS Certified Mail®, with a courtesy copy sent to Contractor via email and with a copy to the Project Delivery Team. The Notice of Violation will specify the non-compliance that is the basis for the finding of violation and will state the City's intent to exercise all applicable remedies, including penalties authorized by TMC 1.07.110.
2. The Notice of Violation will specify that the Contractor can appeal the finding of Violation to the Hearing Examiner pursuant to Chapter 1.23 TMC and will state that, unless appealed or remedied, each specified violation becomes final on the 10th business day from the day the Notice has been received by the Contractor.
3. The Notice of Violation will inform the Contractor that the Violation may be remedied, and no penalty will be sought, if, within 10 business days of the date of the Notice of Violation, the Contractor achieves compliance or submits a plan to achieve compliance and receives EIC Staff approval of the plan. A document for guidance on how to achieve compliance can be located in Appendix No. 6 to these Regulations.
4. Compliance plans shall be submitted to EIC Staff and reviewed by EIC Staff and the Project Delivery Team. EIC Staff will recommend valid compliance plans to the CEDD Director for approval.
5. If the Contractor does not respond to the notice by achieving compliance or by appealing the violation within 10 days or if Contractor's timely submitted compliance plan is not approved, the EIC Program Manager in collaboration with the CEDD Director and the Project Delivery Team will request the City Manager or Director of Utilities to impose one or more of the following penalties contained in TMC 1.07.110 A.
  - a. Publish notice of the contractor's noncompliance on the [City of Tacoma Equity in Contracting webpage](#).
  - b. Cancel, terminate, or suspend the contractor's contract, or portion thereof.
  - c. Withhold funds due contractor until compliance is achieved; and/or



- d. Disqualification of eligibility for future contract awards by the City (debarment) per Section 1.06.279 TMC.
- e. Other appropriate recommended penalty

6. Approval of City Manager or Director of Utilities to Impose Penalties

- a. The EIC Program Manager and CEDD Director will utilize the Prime Contractor Sanction Request Form found in Appendix No. 6 to these Regulations to inform the City Manager or the Director of Utilities that a Notice of Violation has become final (not appealed, not remedied by compliance or an approved compliance plan) and request the City Manager or Director of Utilities to approve the recommended penalty authorized by TMC 1.07.110 and/or to impose any different or additional appropriate penalty.
- b. If the request for penalty is approved, the EIC Staff will notify the Contractor and the Project Delivery Team of the imposition of the penalty by sending the Prime Contractor Notice of Violation form contained in Appendix No. 7 to these Regulations to the Contractor by US Mail and with a courtesy copy sent by email. The Notice of Penalty form will inform the Contractor that the stated penalty becomes effective on the tenth business day following receipt of the Notice of Penalty unless Contractor appeals the penalty to the Hearing Examiner pursuant to Chapter 1.23 TMC or achieves compliance.

7. Publication of Contractor's Non-Compliance

If the penalty of publication of notice of Contractor's noncompliance (TMC 1.07.110 A 2) is imposed, the non-compliant Contractor's firm name and the nature of the violation will be posted on the City of Tacoma Equity in Contracting Program website [Equity in Contracting – City of Tacoma](#).

8. Cancellation of Penalty upon approved Contractor's Correction of Violation

- a. A Contractor has 10 business days from receipt of a Notice of Penalty to achieve compliance or submit a plan to achieve compliance. EIC Staff in consultation with the Project Delivery Team will determine if compliance is achieved or if the compliance plan is recommended for approval by the CEDD Director.
- b. If it is determined that the Contractor has come into compliance with the EIC Requirements, or has an approved plan to achieve compliance, the penalty may be cancelled at the discretion of the CEDD Director.
- c. If a penalty is cancelled, other applicable steps will follow. For example, if the Contract had been suspended, it will be resumed. If notice of Contractor's violation has been published, the notice will be removed from City's website. If funds have been withheld, payments will be resumed etc.

- d. If Contractor's compliance plan is not approved, the penalty will remain in place, however, EIC Staff will continue to work with Contractor and Project Delivery Team to attempt to achieve compliance.

## IX. EIC Project Closeout Process

Upon receipt of notice from the Project Delivery Team that the project is physically completed, EIC Staff will:

- A. Run B2Gnow Contract Summary Report to ensure that EIC Contract Requirements have been satisfied.
- B. Check with Local Employment & Apprenticeship Training Program (LEAP) Staff to ensure LEAP Requirements have been satisfied and the project is ready to close on LCPtracker.
- C. If EIC Contract Requirements are not met, EIC Staff will contact the Contractor via email with copy to the Project Delivery Team and request the Contractor provide an explanation in writing of the discrepancy between EIC Contract Requirements and the final outcomes via email to the Project Delivery Team and to EIC Staff at [EICOffice@cityoftacoma.org](mailto:EICOffice@cityoftacoma.org). EIC Staff and the Project Delivery Team will review and file explanation in B2Gnow files.
- D. If Contract Requirements are not met by the final outcomes and Contractor's explanation for the discrepancy is not satisfactory EIC Staff and the Project Delivery Team may recommend a violation be found and penalty requested.
- E. If Contract Requirements are met, send email to Contractor from [EICOffice@cityoftacoma.org](mailto:EICOffice@cityoftacoma.org) with a copy to the Project Delivery Team.

## X. Certified Business Complaint Process

- A. A Certified Business may submit a complaint regarding any EIC related issues utilizing three options listed below:
  - By sending an email to the EIC Staff at [EICoffice@cityoftacoma.org](mailto:EICoffice@cityoftacoma.org).
  - By filling out the EIC Complaint Form available on [The City of Tacoma Equity in Contracting webpage](#). See EIC Complaint Form as shown at Appendix No. 9 to these Regulations.
  - By calling the EIC Office line at (253) 591-5630

When a complaint has been received, EIC Staff will take the following steps:

- Record the complaint in the EIC Complaint log Database
- Send a message to the complainant acknowledging the receipt and recording of the complaint and informing complainant that an investigation will take place.
- As deemed appropriate, perform an investigation
- If an investigation is conducted, a report will be produced including a timeline of events and findings.
- Submit any final report to the EIC Program Manager for action as appropriate.

# **APPENDICES**

Available upon request to [EICOffice@cityoftacoma.org](mailto:EICOffice@cityoftacoma.org)

- 1. EIC Requirement Setting Methodology**
- 2. Guidance on selecting Option 2: EIC overall Requirements**
- 3. EIC Utilization Form**
- 4. EIC Post Submittal Waiver Request Form**
- 5. EIC Certified Business Termination and Substitution Request**
- 6. EIC Guidance on Compliance Achievement Plan**
- 7. Notice of Contractor's Violation Form**
- 8. EIC Sanction(s) Request Form**
- 9. Subcontractor Complaint Form**