

Issues for which there seems to be consensus

Issue	Sections	180535	Comm Sub 180536	Additional Comments	Determination based on Prior Sessions
<i>Personal Net Worth Test</i>	3-421	Includes a Personal Net Worth Test	Does not Include a Personal Net Worth Test		Include a personal net worth test consistent with US DOT (currently \$1.32 million) with a one year moratorium.
<i>Business Size Standards</i>	3-421	Includes a Business Size Standards Test	Does not include a Business Size Standards Test		Continue current practice of utilizing SBA Business Size Standards as a "ceiling" whereby firms who meet those standards will graduate from the program.
<i>Prime Self Performance</i>	3-435	100% Credit for Self Performed Work	70% Credit for Self Performed Work for those Business which exceed the federal business size standards		Certified firms will receive 100% credit for self-performed work.
<i>Right to Appeal</i>	3-350(f)(1) and (2); 3-453(f)(1) and (2)	Boards have Discretion to deny to hear the appeals they deem frivolous and may deny to hear the appeal	City Attorney has discretion to determine whether an appeal is frivolous and can deny frivolous appeals to come before the Board	Agreement to have discretion by boards upon recommendation by the City Attorney's Office	Boards maintain authority to deny to hear appeals but with input from City Attorney's Office
<i>Good Faith Efforts Standards</i>	Pgs. 24 - 27	3-441	GFEs criteria as currently exists in code.	Expands GFEs criteria.	Incorporate greater specificity into the good faith efforts analysis.
Outstanding Issues					
<i>Bright Line Good Faith Efforts</i>	Pg. 24	3-441	Does not include a "bright line" presumption for GFEs	Provides for a presumptive determination if GFEs are met which may be rebutted by HRD	
<i>Revocation</i>	Pg. 29	3-443	There would be no goal "credit" given for an MBE/WBE whose certification is revoked during the course of a project.	Credit would be given on a project for an MBE/WBE whose certification is "revoked" during the course of a project.	
Outstanding Issues related to Agency Projects					
<i>CUP Deadline of 48 Hours</i>	Pgs. 16, 43	3-443(b); 3-456	48 Hour Requirement for all Contracts (including Agency)	CUP for agency projects must be approved before granting of incentive without specific timing requirement. Also includes requirement that Letters of Intent should be submitted with CUP.	
<i>Budget Review Process for Segmentation of Scopes of Work</i>	Pgs. 4, 13,	3-431(b); 3-421(a)(10); 3-431(e); 3-441(a)(4); 3-450 (a) and (b); 3-453(a) and (b)	Goals set by HRD/Board without input on segmentation from Agency	Provides process whereby Agency has input on segmentation of work	

<i>Good Faith Efforts Determination</i>	<i>Pgs. 24, 27</i>	3-441	Director of HRD makes determination for all contracts	Incorporates presumptive determination if GFEs are demonstrated with Agency having final say if HRD and agency cannot mutually agree. The Fairness in Construction Board and Fairness in Professional Services and Goods Board (depending on the contract size) can hear appeals of the good faith efforts determination.	Note: The two versions also contain slightly different processes for review process between HRD and agency (see pg. 27)	
<i>Determination of Waiver</i> (Note: The flexibility in waiving goals is a necessary component of a narrowly-tailored program.)	<i>Pg. 19</i>	3-437	HRD Director makes determination on agency projects based on finding of good faith efforts.	Agency makes determination on Agency projects if HRD and agency cannot mutually agree based on finding of good faith efforts.		
<i>Modification or Substitution</i>	<i>Pg. 28</i>	3-443	HRD Director determines	Agency determines if HRD and agency cannot mutually agree		
<i>Liquidated Damages</i>	<i>Pg. 31</i>	3-447	Director of HRD makes determination for City and agency projects unless director and agency agree to alternative for agency projects	Agency makes determination for agency projects	NOTE: Also differences between the two versions related to the cap on liquidated damages.	
Administrative Processes						
<i>Explanation of Goals</i>	<i>Pg. 15</i>	3-431(g)	No requirement that HRD Director or Board provide written explanation for goals	Requires HRD Director or Board to provide written explanation for goals		
<i>Rules and Regulations</i>	<i>Pg. 62</i>	3-463	Rules and regulations do not have to be in writing/approved	Rules and regulations must be in writing and approved by City Council		
<i>Look-back provision</i>	<i>Pg. 64</i>	3-463	No look back provision	Requires HRD Director to provide report to City Council outlining impacts of any revision to Code to ensure the changes achieve what was intended		
<i>Mediation Provision</i>	<i>Pg. 66</i>	3-467(g)	Arbitrator/Mediator appointed by HRD and mediation conducted as established by the mediator	Specifies that arbitration/mediation between Contractor/Developer is in accordance with development agreement		
<i>Explanation for Commercially Useful Function</i>	<i>Pg. 3</i>	3-421(11)	No required explanation if MBE/WBE is not performing commercially useful function	Department or Director must provide explanation if an MBE/WBE is not performing a commercially useful function.		
<i>Board Investigation</i>	<i>Pg. 37; 42</i>	3-450; 3-453	Board's authority does not include right to investigate delays by Director/Agency	Allows boards to investigate delays in process.		

<i>Agency Board Actions</i>	<i>Pgs. 37 and 42</i>	3-450; 3-453	Certain actions by City Council only	Some authority granted to City Council is transferred to agency boards.		
<i>Board rules</i>	<i>Pgs. 38-39 and</i>	3-451	Board Rules do not have to be in writing	Board rules to be in writing		