



CITY OF HOUSTON
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of
BUSINESS OPPORTUNITY

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September 24, 2021

Ms. Chyna Gragg, President
Roofing Designs by JR, LLC
c/o Kevin Pennell
Pennell Law Firm, PLLC
19 Briar Hollow Lane, Suite 110
Houston, TX 77027

Sent Via Email To: chyna@roofingdesigns.com; kevin@pennellfirm.com; msternfels@shackelford.law;
ajames@hilldaypr.com

RE: Appeal of Approval of MWSBE Post-Award Deviation Request on City of Houston Housing and Community Development Department's Contract# 4600015843: 900 Winston ("Project")

Dear Ms. Gragg:

Based on Roofing Designs by JR, LLC's ("Roofing Designs") request for an appeal of the decision, dated June 28, 2021, by the City of Houston Housing and Community Development Department (HCDD)¹ to approve a Deviation Request by Royal American Construction ("Royal American") on the above-referenced contract, a final administrative review was held on August 11, 2021. I have conducted an analysis of the related documents from the Project's contract file maintained by HCDD and considered the information you provided during the administrative review. After careful consideration, I find that the City of Houston's Minority, Women, and Small Business Enterprise (MWSBE) Program's Post-Award Deviation Request process was not followed, as a result, HCDD erred in its approval of Royal American's Deviation Request.

The City of Houston is committed to ensuring that MWSBEs are able to fully participate in City contracting and contracts in which the City has an interest. One of the ways in which the City accomplishes this is by placing Minority and Women Business Enterprise goals on contracts for the utilization of these companies. Prime contractors on these projects must make good faith efforts, as required by the City's Good Faith Efforts Policy, to utilize MWSBEs to meet the established contract goals. An integral element of a prime's good faith efforts is ensuring it complies with the City's Post-Award Deviation Request process, which outlines the required steps to remove or reduce a listed MWSBE or add a new MWSBE to the plan. The City's assessment of whether a Deviation Request is granted is based on a prime's compliance with these stated requirements.

¹ The Office of Business Opportunity ("OBO") administers the City's MWSBE Program, however, delegates select functions to City Contracting Departments such as HCDD. As needed, OBO performs final administrative reviews of City Contracting Departments' determinations related to the MWSBE Program.



A review of the Project file reveals that Royal American committed to make good faith efforts to meet a 23% MBE and an 11% WBE goal on this Project. Royal American committed to utilizing Roofing Designs for 11.30% WBE credit and entered into a subcontracting agreement with Roofing Designs on or around December 1, 2020. On or around June 23, 2021, Royal American submitted a Deviation Request to the HCDD to remove Roofing Designs from the Project, alleging that Roofing Designs “failed to perform work in a way that is acceptable to the contracting department at Royal American”. Royal American proposed to replace Roofing Designs with an SBE certified company and another WBE certified company. On June 7, 2021, Royal American provided Roofing Designs with a *72-hour Notice to Perform* to address alleged non-performance issues and met with Roofing Designs to, reportedly, address these issues on June 14, 2021. Royal American provided Roofing Designs with a *Termination Notice* dated June 16, 2021, which stated that “effective immediately, those certain contracts between [Royal American] and Roofing Designs...are hereby terminated”. The *Termination Notice* stated that “[a]ccess to the site will be granted between the hours of 10:00 a.m. and Noon CDT on Thursday, June 17, 2021 to facilitate removal of any tools or equipment belonging to Roofing Designs...”

The City’s Post-Award Deviation Request process, available on the Office of Business Opportunity’s website, expressly requires that “[t]he Prime must give notice of removal...to the affected MWSBE, with a copy to OBO, stating the request to remove...and specific reasons...” and [t]he Prime must give the affected MWSBE five (5) business days to respond to the written notice of removal...” In this case, there is no evidence that the requisite five (5) business days’ notice was provided to Roofing Designs by Royal American. Royal American’s *72-Hour Notice* cannot be considered their deviation notice as, based on its content, it functioned as a notice to cure alleged non-performance issues not an intent to deviate. In addition, Royal American’s *Notice of Termination* took effect immediately upon issuance, not affording Roofing Designs the requisite five (5) business days to respond to the notice of removal.

The City’s Post-Award Deviation Request process requires that the City “...contact the affected MWSBE to confirm their consent or objection to the removal or reduction.” HCDD reported that upon receiving Royal American’s June 23, 2021 Deviation Request to remove Roofing Designs, a compliance officer attempted to reach out to Ms. Gragg once by phone without success. There are no details in the file indicating when this phone call was made or indicating that HCDD communicated otherwise with Roofing Designs regarding Royal American’s submitted Deviation Request. During the administrative review, Roofing Designs stated that they received the *72-Hour Notice* and the *Termination Notice* from Royal American but did not receive any communication from HCDD about the Deviation Request.

Based on the above, I find that Royal American failed to comply with the City’s Post-Award Deviation Request process by terminating Roofing Designs without providing the requisite notice and before receiving express approval from HCDD to deviate from using Roofing Designs on the Project. I further find that HCDD erred in its approval of Royal American’s Post-Award Deviation Request by failing to enforce all requirements of the Post-Award Deviation Request before making a decision to approve.

This determination on appeal should not be construed as a directive to reinstate Roofing Designs as a subcontractor on the Project, as there are technical project issues and disputes that are not addressed by this decision. Instead, this determination affirms that Roofing Designs was removed without correct application of the City’s deviation process. As a result, failure to follow the required process will be considered in assessing, at the end of the Project, whether Royal American made good faith efforts to comply with the City’s MWSBE Program’s requirements.

You may contact my office at (832) 393-0615 if you have questions regarding this final administrative determination.

Sincerely,

A handwritten signature in blue ink that reads "Marsha E. Murray". The signature is written in a cursive style.

Marsha E. Murray
Director

cc: Lalla V. Morris, Assistant Director, Office of Business Opportunity
Rachel Grier, Senior Assistant City Attorney, Legal Department
Keith Bynam, Interim Director, Housing and Community Development Department
Argentina James, President & CEO, HillDay Public Relations, Inc./HillDay Industries
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