



EXECUTIVE ORDER  
**CITY CONTRACTORS' PAY OR PLAY PROGRAM**

EO No.	EO 1-7
Effective Date:	Upon Approval

**1. AUTHORITY**

Article VI, Section 7a, of the City Charter of the City of Houston; and City of Houston Code of Ordinance, Chapter 15.

**2. BACKGROUND**

- 2.1. Contractors that do not provide healthcare benefits for their workforce impose a burden on the public and private agencies that provide this care to uninsured persons in the City of Houston, Harris County, and to individuals and businesses whose health insurance premiums increase because of the shifting of costs onto those payers.
- 2.2. The provision of health benefits is instrumental in attracting and retaining a good workforce and is a characteristic of a responsible contractor.
- 2.3. The City intends to enhance fairness in the competition for contracts between bidders that choose to offer a health benefit to their workforce and those that do not.

**3. PURPOSE**

The purpose of this Executive Order is to:

- 3.1. require certain contractors to provide to certain employees a minimum level of healthcare benefits or to contribute a designated amount to be used to offset the costs of providing healthcare to uninsured people in the Houston/Harris County area;
- 3.2. establish the Pay or Play Program (Program) and the procedures for the administration thereof;
- 3.3. authorize studies to evaluate the effectiveness and impact of the Program on contracting firms and the City;
- 3.4. provide funding to the Office of Business Opportunity (OBO) to pay the actual costs of implementing, auditing, and monitoring compliance with this Order and related mandates; and
- 3.5. augment and enhance the goals and purposes of Chapter 15 of the City's Code of Ordinances by supplementing the measures authorized and/or required therein with the Program to enhance fairness in competition for City contracts. No provision of this Executive Order shall be construed to excuse compliance with any law or any procedure authorized by law.

**4. SCOPE**

4.1. The Program applies to:

- 4.1.1. Contracts for services in which the total expenditure by the City, including contingencies, amendments, supplemental terms and/or change orders, equals or exceeds \$100,000.

Approved:

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Date Approved:

1/26/2021

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4.1.2. Subcontracts for services in which the total value of the subcontract, including contingencies, amendments, supplemental terms and/or change orders, equals or exceeds \$200,000. The contractor is responsible to the City for compliance of covered employees of covered subcontractors.

4.2. The Program does not apply to:

4.2.1. Any contract in which the primary purpose (51% or more) is the procurement or purchase of property, leases, goods, supplies, and/or equipment;

4.2.2. An intergovernmental contract, interlocal agreement, bulk purchasing or purchasing cooperative.

4.2.3. Any contract for which the City of Houston has not expended funds, regardless of funding source.

4.3. This Executive Order applies to any advertised procurements, sole source procurements, any bids or for services or construction.

4.4. This Executive Order applies to all On-Call, Work Order and Job Order solicitations and contracts.

4.5. This Executive Order applies to all departments within the City of Houston.

4.6. This Executive Order will prospectively apply to all contracts that exceed \$100,000 and/or all subcontracts that exceed \$200,000 throughout the life of the contract.

4.7. This Executive Order applies to employees of a covered contractor or subcontractor, including contract labor, who are over age 18, work at least 30 hours per week with any amount of time worked on the covered City contract or subcontract.

4.8. No later than thirty (30) days after the effective date of the Executive Order, the City's Chief Procurement Officer and departments with delegated authority shall make best efforts to:

4.8.1. Incorporate the requirements of this Executive Order into all formal competitive procurements issued after the effective date of this Executive Order and resulting contracts for which contract negotiations begin after the effective date of this Executive Order using the language approved by the Legal Department;

4.8.2. Add to the currently published Terms and Conditions for Purchase Orders (<http://purchasing.houstontx.gov>) the language approved by the Legal Department that requires the contractor to comply with this Executive Order.

4.9. No later than thirty (30) days after the effective date of the Executive Order, City Departments shall make best efforts to:

4.9.1. Ensure that City Department staff that administers or manages contracts are aware of this Executive Order.

4.9.2. Incorporate the requirements of this Executive Order into all applicable City Contracts for which contract negotiations begin after the effective date of this Executive Order by using the language approved by the Legal Department;

4.9.3. Encourage contractors that perform work for a department to comply with this Executive Order.

## 5. PROCEDURES

- 5.1. Prior to the commencement of a covered contract, the contractor must declare its intent to comply with the Program and will submit a plan for compliance in the form and manner prescribed by the Office of Business Opportunity, which shall serve as the Director and/or Designee of the Program.
- 5.2. Contractors will report to the City regarding the identity of covered subcontracts and covered employees working under subcontracts in the form and manner prescribed by the Director and/or Designee.
- 5.3. Pay – If the contractor elects to comply by paying, the contractor will pay to the City \$1 for each hour of work performed by covered employees within a 40-hour work week, including covered employees of covered subcontractors on a City contract. The OBO Director and/or Designee will prescribe the time and form of payment. All payments to the City under this section shall be deposited to the Contractor Responsibility Fund, which shall not be used for any other purpose except to assist in providing health care services to uninsured persons in the Houston area and the Pay or Play program administrative costs, as described in this Order.
- 5.4. Play – If the contractor elects to comply by playing, the contractor will provide documentary proof in a form acceptable to the Director and/or Designee that it provides health benefits to each covered employee, and that covered employees of covered subcontractors are provided health benefits. The health benefits must meet or exceed the following standards:
  - 5.4.1. The employer contributes no less than 75% of the total premium costs per covered employee per month toward the total premium cost; and
  - 5.4.2. The covered employee contributes, if any amount, no greater than 25% of the total monthly premium costs. A contractor is deemed to have complied with this provision with respect to a covered employee who is not provided health benefits if the employee refuses the benefits and provides proof of insurance or an approved Employee Waiver (POP-8) form.
- 5.5. Pay and Play – A contractor may pay on behalf of some covered employees and play on behalf of other covered employees, including subcontractors' covered employees.
- 5.6. Contractors will submit information regarding compliance with the Program in a form and manner prescribed by the Director and/or Designee.
- 5.7. In cooperation with the Director and/or Designee, all City departments shall implement procedures to facilitate the administration of the Program. This shall include, but not be limited to, the development of standards for management of data necessary to monitor the compliance by contractors and the establishment of accounting procedures to ensure accurate accounting for and disbursement of any monies collected from contractors.
- 5.8. In cooperation with the Director and/or Designee, the Legal Department shall develop language for inclusion in contracts that includes the obligation of covered contractors to meet the Program requirements and specifies the right of City personnel, including Controller's Office personnel, to examine the books and records of all contractors and subcontractors that relate to compliance with the Program.

## **6. IMPLEMENTATION AND OVERSIGHT**

- 6.1. A portion of the Contractor Responsibility Fund shall be used to pay the actual costs of implementing the program, including but not limited to paying the salaries and benefits of employees approved by the Mayor to work on the Pay or Play Program and related issues.
- 6.2. In the event the balance of the Fund is insufficient to cover salaries and benefits due to contractors' decisions not to "pay" or the allocation of funds for other purposes, the positions funded by this Order shall be laid off pursuant to section 14-141.4 of the Code of Ordinances.
- 6.3. OBO and the Finance Department shall cooperate in determining the funding for the Program each

fiscal year.

6.4. OBO and the contracting department shall cooperate to enforce compliance and remedy noncompliance by contractors.

6.4.1. The Office of Business Opportunity will audit contracting departments' POP program to determine if the department is in compliance.

6.4.2. OBO may request that the contracting department reassign the POP Liaison responsible for departmental POP compliance, if OBO determines that the department unsatisfactorily enforced the program during the review period.

6.4.3. Pursuant to the terms of the purchase order or Contractor's agreement with the City and to the extent allowed by law, Contractors that have been found to not be in compliance with this Executive Order may be subject to suspension or termination of the relationship with the City if no remedial action is taken in a manner acceptable to the City. .

## **7. EXCEPTIONS**

7.1. The City of Houston will award a contract to a contractor that neither Pays nor Plays if the contractor has received an exemption (POP-4 Prime/Subcontractor Waiver Request Form) from OBO.

7.2. A contract or subcontract is appropriate for an exemption based on the following:

7.2.1. Adverse Impact – Compliance with the Pay or Play Program would cause an unreasonably adverse impact on the City's ability to obtain services or an unreasonably adverse financial impact on the City.

7.2.2. Foreign Company – The contract or subcontract is with a company whose headquarters and/or employees are located outside of the United States of America and provide universal health insurance to employees traveling and working in the United States of America.

7.3. The contracting department must submit to OBO a waiver request and back up documentation to support the waiver request.

## **8. RELATED DOCUMENTS AND INFORMATION**

- Ordinance No. 2009-1293 (Dec. 9, 2009)
- Ordinance No. 2007-534 (May 2, 2007)

## **9. ATTACHMENTS**

9.1. POP FORMS: OBO reserves the right to publish revised POP forms at their discretion, which revision shall not require an amendment to this Executive Order.

Attachment 1 – Form POP-1 Acknowledgement Form  
Attachment 2 – Form POP-2 Certification of Compliance  
Attachment 3 – Form POP-3 Participating Subcontractors  
Attachment 4 – Form POP-4 Prime/Subcontractor Waiver Request  
Attachment 5 – Form POP-5 Monthly PAY Option Report  
Attachment 6 – Form POP-6 Department Monthly Update  
Attachment 7 – Form POP-7 Quarterly Play Option Report  
Attachment 8 – Form POP-8 Employee Waiver Request  
Attachment 9 – Form POP-9 Self-Insured Contractor Request

## **10. CONFLICT AND REPEAL**

10.1. In the event of a conflict between this Executive Order and any federal or state law, statute, or regulation, the federal or state law, statute or regulation supersedes this Executive Order.

10.2. This Executive Order supersedes Executive Order 1-7, effective January 3, 2012, which shall be of no further force or effect. All other departmental and City policies that are inconsistent with this Executive Order are hereby superseded.

## 11. POLICY SPONSOR

**Department:** Office of Business Opportunity